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LEWIS, JAMES et al V. U.S. DEPT OF AGRIC. - CASE, CORRESPONDENCE
1968

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CIVIL ACTION NO.

JAMES LEWIS, WILLIE HUDSON
REBECCA JAMES, GENNIE LEE
GRIMSLEY, MAE RETHA JOHNSON
WOODY FRADONIA JONES, JOHN
WESLEY LAINER, CARRIE LOU
BROWN

Plaintiffs,

v.

ORVILLE L. FREEMAN, Secretary
of the United States Depart-
ment of Agriculture; S. R.
SMITH, Administrator of the
Consumer and Marketing Service,
United States Department of
Agriculture,

Defendants.

COMPLAINT

I. JURISDICTION

1. Jurisdiction is conferred on this court by 28 U.S.C.A. §§ 1331, 1332, 1337, 1343, 1346 and 1361 and 5 U.S.C.A. § 702.

2. This action arises under the Constitution and laws of the United States, including the Fifth and Fourteenth Amendments to the Constitution and 7 U.S.C.A. §§ 612c, 1431, 1731, 2011-2025 and 5 U.S.C.A. § 1001, et seq. A declaration rights is sought under 28 U.S.C.A. §§ 2201 and 2202. The amount in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars ($10,000).

3. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on their own behalf, on behalf of the members of their family, and on behalf of all of the needy persons in those counties in Florida currently having neither a Food Stamp Program nor a Commodity Distribution Program. There are questions of law and fact common to all Plaintiffs and the members of the class they represent. These common questions are the predominating questions in the Complaint and the members of the class are so numerous as to make joinder of parties impracticable. The claims of the Plaintiffs are typical of the claims of all members of the class and the Plaintiffs fairly and adequately represent the claims of all members of the class.

II. PARTIES

4. Plaintiffs are all residents of Hendry County, Florida. Each of them is eligible for any Commodity Distribution or Food Stamp Program which might be established in Florida by virtue of his being a recipient of welfare. Plaintiff JAMES LEWIS currently participates in the Old Age Assistance Program. Plaintiffs WILLIE HUDSON, REBECCA JAMES, GENNIE LEE GRIMSLEY, MAE RETHA JOHNSON, and WOODY FRADONIA JONES currently participate in the Aid to Families with Dependent Children Program. Plaintiffs JOHN WESLEY LAINER and CARRIE LOU BROWN currently participate in the Aid to the Permanently and Totally Disabled Program. None of the Plaintiffs currently has adequate income

to attain a nutritionally adequate diet for himself and his family. Each of the Plaintiffs is a "needy person".

5. Defendant ORVILLE L. FREEMAN is the Secretary of the United States Department of Agriculture, is responsible for the execution of the laws giving rise to this claim, and is a resident of a State other than Florida. Defendant S. R. SMITH is the Administrator of the Consumer and Marketing Service of the United States Department of Agriculture, and a resident of a State other than Florida.

III. DESCRIPTION OF FEDERAL FOOD PROGRAMS

6. The Food Stamp Program (7 U.S.C.A. §§ 2011-2025; 7 C.F.R., Part 1602) was established by Act of Congress in 1964 It is the declared policy of Congress that "in order to promote the general welfare . . . the Nation's abundance of food should be utilized . . . to the maximum extent practicable to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households." 7 U.S.C.A. § 2011. 7 U.S.C.A. § 2013 contemplates that the Secretary will, where possible, work with a cooperating State agency in the administration of the Food Stamp Program. Pursuant to this Section, the Secretary authorized that Defendant SMITH, as Administrator of the Consumer and Marketing Service, shall make final approval of State-submitted Programs. 7 C.F.R. § 1600.1, et seq. However, where cooperative actions between State and Federal authorities do not carry out the policies and purposes

of the Act, the Congress clearly provided authority for the Secretary to administer the Program in an alternative manner.

> Notwithstanding any of the other provisions of this chapter, the Secretary may provide for the issuance of or presentment for redemption of coupons to such person or persons, and at such times and in such manner, as he deems necessary or appropriate to protect the interests of the United States or to insure enforcement of the provisions of this chapter or the regulations issued pursuant to this chapter. 7 U.S.C.A. § 2023(a).

7. The Commodity Distribution Program authorizes Defendant FREEMAN as Secretary of Agriculture, to establish the terms of Food Distribution Programs to be administered by the Commodity Credit Corporation. 7 U.S.C.A. § 1431. He is empowered to design Programs cooperating with State, Federal or private agencies to assist "needy persons".

IV. CLAIM

Defendants FREEMAN and SMITH have, contrary to law, failed to establish an adequate Program in a majority of the counties in Florida, including Hendry County. Having failed to establish a Food Stamp Program with State cooperation in accordance with 7 U.S.C.A. § 2013, they have further failed to secure the rights of the Plaintiffs by exercising their clear mandate under 7 U.S.C.A. § 2023(a) to establish a Food Stamp Program without State cooperation. Having, in violation of Federal law, failed to establish a Food Stamp Program, they have further failed to establish a Commodity Distribution Program under 7 U.S.C.A. § 1431. In failing to establish either of the two programs in Hendry County and other Florida counties currently having neither program, the Defendants have violated the mandate of federal law and abused their discretion, and these actions have deprived the Plaintiffs and others similarly situated of the equal protection of the laws. From these illegal actions, the Plaintiffs and others in their class have suffered grievous injury in having insufficient food and nutritionally inadequate diets. Any continuation of this illegal deprivation will result in further irreparable injury to them.

WHEREFORE, PLAINTIFFS on behalf of themselves and all others similarly situated, pray that this court:

A. Assume jurisdiction in this matter.

B. Declare that the Plaintiffs and others similarly situated are by virtue of their immediate and present need entitled under the Constitution, statutes and regulations of the United States to the establishment of either the Commodity Distribution Program or the Food Stamp Program in each of the counties in Florida not having either Program.

C. Issue a permanent injunction compelling Defendants FREEMAN and SMITH to immediately establish either the Commodity Distribution Program or the Food

Stamp Program in those counties of Florida, including Hendry County, which do not now have, or plan to institute in the near future, either Program, in order to secure an adequate nutritional standard for the named Plaintiffs and others similarly situated who are in immediate need, there being no adequate remedy at law.

D. Allow Plaintiffs their costs and grant them and others similarly situated such further relief as the Court may deem just and appropriate.

Respectfully submitted,

Kent Spriggs

Kent Spriggs
Joseph C. Segor
Counsel for Plaintiffs
c/o South Florida Migrant
Legal Services Program, Inc.
395 N. W. First Street
Miami, Florida 33128

OF COUNSEL:
Alan Kuker
Roberta Fox
c/o South Florida Migrant
Legal Services Program, Inc.
132 S. W. Avenue B
Belle Glade, Florida, Florida 33430

[N.D.]

I. THE UNAVAILABILITY OF BENEFITS OF THE FOOD STAMP OR DIRECT DISTRIBUTION PROGRAM TO RESIDENTS OF ELMORE AND OTHER COUNTIES IS ARBITRARY AND UNREASONABLE AND DENIES THEM THE EQUAL PROTECTION OF THE LAWS.

Plaintiffs Jackson, Edwards, and Zeigler live in Elmore County, Alabama, and are unable by reason of their residence there to qualify for and obtain the benefits of either the food stamp or direct distribution program. Elmore County itself does not participate in either the food stamp or direct distribution program. The county officials are free to deny the benefits of those programs to eligible persons in the county under the defendants' regulations which authorize and permit the distribution of the benefits of the food stamp and direct distribution programs only in limited areas of the State and the withholding of benefits from persons and families who do not reside in one of the designated and included counties. The error of defendants' action lies in their failure to take either of two actions: (1) Defendants have failed to assure the availability of benefits to persons throughout the State through the State's operation of the food stamp and direct distribution programs and have approved the State plans for these programs which make benefits unavailable in Elmore and other counties, and defendants continue to provide federal funds to the State for the operation of the programs, although the defendants are authorized to impose such requirements and to terminate funds to enforce compliance. §10(f) Food Stamp Act, 7 USC §2019(f); 6 CFR §§503.10(a), 503.12. (2) The defendants have authorized and provided for the discriminatory distribution of benefits by the failure to assure by the exercise of their own power the availability of benefits to persons throughout the State without regard to county residence, although the Secretary is authorized to provide for the distribution of surplus food himself or by any federal or private agency which he deems appropriate without regard to the approval or participation of the State.* 7 USC §§612c, 1431; see 6 CFR §§503.3(e), 503.5.

This failure to assure the statewide availability of benefits and approval of the withholding of benefits on the basis of county residence has denied to plaintiffs and residents of Elmore County and members of their class the equal protection of the laws. It has long been established that geographical classifications for the purpose of imposing burdens or awarding benefits within a State are not favored and must be shown to be reasonable. "We have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scuritinzed and carefully confined." Harper v. Virginia Board of Elections, 383 US 663, 670 (1966). Here the vital interests of the plaintiffs are the benefits necessary to reasonably adequate nutrition and health and perhaps even to life itself. The Supreme Court's Statement on the consideration of place of residence in Reynolds v. Sims, 377 US 533 (1963) is applicable here:

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* By their action since the filing of this case defendants have confirmed plaintiffs' allegation of their statutory power. By telephone on March 21, 1968, Mr. Dodell, of the United States Attorney's office, counsel for defendants, informed Mr. Jelinek, counsel for plaintiffs, that the Department of Agriculture had determined to make surplus food commodities available in Elmore County by its own means. Many needy people in the three remaining counties in Alabama which lack the benefits of either program still await such action by the defendants.

> And the concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged. With regard to the allocation of legislative representation, all voters as citizens of a State stand in the same relation regardless of where they live....Since the achieving of fair and effective representation for all citizens is condedly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as individious discriminations based upon factors such as race or economic status....
> [377 US at 565]

The individual interests involved here are at least as important--both to those who claim them and to more fortunate citizens--as the right to vote. Nor are the rights in the benefits of these programs, being statutory in origins, of less legal dignity than the right to vote in state elections. However, the injury to plaintiffs here is not mere "dilution" of their interests but complete deprivation of vital benefits.

The test traditionally applied to intra-state geographical classifications has also been stated by the Maryland Supreme Court, Salsburg v. State, 201 Md. 212, 94 A 2d 780, affirmed 346 US 545 (1953):

> Insofar as a statute grants privileges to or places burdens upon an individual, or limits his rights, especially his right to engage in a particular business or occupation, such state may be invalidated by an arbitrary or unreasonable classification or discrimination in respect to territory....[Citations omitted.] The classification must be reasonable and must rest upon some ground of difference having a fair and substantial relation to the

(continued on next page)

> object of the legislation, and the law shall apply equally to all persons similarly situated within the territory described in the act.*

Nor may a county be allowed to withhold public benefits, otherwise available, from its residents arbitrarily or for an impermissible reason, e.g., race, see Griffin v. County School Board of Prince Edward County, 377 US 218 (1964).

Here no relevant difference in the area subject to classification justifies the denial of benefits to residents. No rational principle can govern the selection of counties in which benefits will be unavailable, for there is no primary selection of such counties. The defendants do not themselves designate counties to participate or not to participate in programs, nor do they require that the State officials do so. Since the negative decision as to each county (that benefits will not be available) is left to the county officials, to be made without the limitation or guidance of any standards whatsoever, there is no reason to assume that that decision is based on consideration of the extent of poverty and individual need in the county rather than impermissible considerations such as race, retaliation for unacceptable political activities or personal malice. See, e.g., *Louisiana v. United States*, 380 US 145, 150 (1965); *Cox v. Louisiana*, 379 US 536, 557 (1965); *Yick v. Hopkins*, 198 US 356, 366 (1886).

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* In Salsburg the court upheld a rule, applicable in only three counties, that illegally seized evidence was admissible in gambling cases.

In Maryland Coal & Realty Co. v. Bureau of Mines, 193 Md. 627, 69 A. 2d 471 (1949), the court applied the above-stated standard to hold in violation of Fourteenth Amendment equal protection a statutory prohibition of strip mining which exempted a county which had substantial strip mining activity:

> [T]he power of the legislature to restrict the application of statutes to localities less in extent than the State, as the exigencies of the several parts of the State may require cannot be used to deprive the citizens of one part of the State unless there is some difference between the conditions in the territory selected and the conditions in the territory not affected by the statute sufficient to afford some basis, however light, for classifition.
> [69 A. 2d at]

Although it may be rational and justifiable to withhold the *distribution* of benefits from a certain geographical area upon a determination that substantially no need was present there, that is an altogether different matter from making all needy and otherwise eligible *persons* residing in certain designated areas ineligible for benefits distributed *anywhere* by reason of such residence in itself. County residence has no relation to the purposes of these programs or to need for food assistance. Elmore County is in fact one of the poorest counties in the nation and has a higher incidence of poverty than other Alabama counties which have food programs. (1960 Census); Jackson, Edwards, and Zeigler were and continue to be in severe and immediate need of food, just as much as other plaintiffs who live in Dallas or Marengo County, and during the years when they were deprived of food benefits they received no compensating benefit from their residence in Elmore County.

In several recent cases three-judge district courts have struck down welfare durational residence requirements as inconsistent with the purposes of public welfare legislation and unjustified by any permissible legislative purpose, Ramos v. Health and Social Services Board, 276 F. Supp. 474 (E. D. Wisc. 1967); Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967), prob. juris. US , 19 L. ed. 820 (1968); Green v. Department of Public Welfare of the State of Delaware, 270 F. Supp. 173 (D. Del. 1967). These courts held that among needy people living in the State it was not rational to distinguish between those who had lived there more than a year and those less than a year. In Green the court stated:

> It is evident to us that as to these families living in Delaware for less than one year the denial of public assistance fails to carry out the stated purposes for the Public Assistance Code. It in fact tends to frustrate them. The residence requirement prevents prompt assistance to some of the state's needy and distressed and to that extent is the antithesis of "humane."
> [270 F. Supp. at 177.]

Here, also, the artificial division of people into residents of counties, done for purposes unrelated to those of the food program, a together "prevents...assistance to some of the State's needy and distressed and to that extent is the antithesis of 'humane.'"

The only apparent reason for withholding benefits from needy persons in certain counties as a whole is to reduce and limit federal expenditures. But under the applicable case law limitation of funds cannot justify the arbitrary denial of benefits on the basis of county residence. Such a classification is not made reasonable by the fact that it results in a saving of money to the government. The Supreme Court has repeatedly stated that constitutional protections may not be denied because of their cost to the government. Thus in *Edwards v. California*, 314 US 160 (1941), a statute which prohibited persons from assisting indigent non-residents to enter the State was held unconstitutional, against California's claim that the influx of persons in need of public assistance would create a "staggering" financial burden. 314 US at 173. If protection of the fisc does not justify the denial of rights to non-residents, then *a fortiori* it cannot justify the arbitrary geographical classification of persons within the state. The Supreme Court stated in *Hooper v. Tax Commission*, 284 US 206 (1931):

> The [government] is forbidden to deny due process of law or the equal protection of the laws for any purpose whatsoever.
> [284 US at 217]

Accord, Collins v. State Board of Social Welfare, 31 NW 2d 4, 9 Sup. Ct. Ia. (1957).

It is beyond dispute that the constitutional command of equal protection limits the power of federal officials and the character of federally-administered programs. *Bolling v.*

Sharpe, 347 US 497 (1954); *Simkins v. Moses H. Cone Mem. Hosp.*, 323 F.2d 959 (4th Cir. 1963), *cert. denied* 376 US 938 (1964). At issue here is the defendants' action in providing for and prescribing the classification of needy people by county residence, approving and confirming the withholding of benefits from persons residing in Elmore and other counties and failing to provide otherwise for the availability, in those counties, of benefits within the control of the defendants; the defendants not only control the conditions of the extent and manner of availability of these federal benefits but also determine whether these benefits will be made available otherwise than through State agencies. The defendants' actions thus directly affect the plaintiffs and members of their class and deprive them of the equal protection of the laws.

The Columbia University School of Social Work | *401 West 117th Street*
CENTER ON SOCIAL WELFARE POLICY AND LAW
Legal Activities and Research Division
New York, N. Y. 10027
280 - 4112

August 2, 1968

Mr. Carl Rachlin
Scholarship, Education & Defense Fund, Inc.
164 Madison Avenue
New York, New York 10016

Dear Carl:

I have spoken to Ronald Pollack about the proposed bringing of cases in counties in which there is no federal food stamp or commodities distribution program. South Carolina is indeed one of the places we have in mind. Mr. Pollack assure me that he will be in touch with you shortly in regard to working out the procedures in bringing these cases.

I have also spoken recently to Phil Schrag about the constitution for the Bar Association. I have informed him that there is a meeting of the Executive Committee planned for August 8th. He suggested that it might be wise for him, Henry Freedman and Oscar Chase to be present at this meeting to inform you and the rest of the committee members of the background discussions leading up to the document they submit. Regrettably, I am unable to attend this meeting, as I will be abroad. It is my wish that no final action be taken on the constitution at this meeting and that another meeting be scheduled some time after August 24th. As you will soon appreciate, the constitution is a somewhat complex document involving serious policy considerations and assumptions about the nature of our organization. Also, you will not receive a copy of the final document until shortly before August 8th. Accordingly, the matter should not be finally decided by our committee at one meeting. I appreciate that we will be somewhat behind schedule if we proceed this way. But as I informed you the other day, there is no serious harm in postponing the general membership meeting from September 15th until early October. That would allow us to hold a meeting of the current membership sometime in September to pass upon the constitution we recommend. In light of these considerations, I have not made arrangements for the proposed meeting to be held in September.

Best regards,

Lee Albert

Lee A. Albert
Director

LA:ap
cc: Father Quinn
Fordham University

John DeWitt Gregory
CALS

SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR RACIAL EQUALITY inc.
164 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 532-8216

September 15, 1968

Frederic S. LeClercq, Esq.
Director
Emory Community Legal Services Center
1397 Oxford Road, N.E.
Atlanta, Georgia

Dear Mr. LeClercq:

In accordance with our telephone conversation on September 14, 1968, I have enclosed a copy of our complaint against the South Carolina "Common-law Relationship" regulation. Any assistance you can furnish in locating potential plaintiffs would be greatly appreciated.

Ronnie Pollack, Esq., at the Columbia Center on Social Welfare Policy and Law, was advised by the State of South Carolina that the following counties have neither food stamp nor commodity distribution programs:

Aiken
Anderson
Charleston
Cherokee
Fairfield
Greenville
Greenwood
Lancaster
Lexington
Pickens
Richland
Spartanburg

Plaintiffs are needed in these counties and in any others without food stamp or commodity distribution programs. It is believed that Troup County is the only county in Georgia without either of the two programs, and that it will soon have a program.

I shall send you copies of the complaints to be filed against the Department of Agriculture within a few days.

Thanks for your help.

Contributions are deductible for income tax purposes

■ *president:* Andrew E. Norman ■ *vice presidents:* William S. Ellis, Nannette Sachs ■ *secretary:* Ezra Levin ■ *treasurer:* Shelley Appleton ■ *executive director:* Marvin Rich ■ *leadership development director:* Ronnie M. Moore ■ *legal director:* Carl Rachlin ■ *BOARD OF DIRECTORS:* Nils R. Douglas, *chairman* ■ James Baldwin ■ Katrina McCormick Barnes ■ Allan Barton ■ Jonathan Bingham ■ Canon James P. Breeden ■ Robert Curvin ■ Charlotte Devree ■ Robert F. Drinan, S.J. ■ Michael O. Finkelstein ■ Doris Freedman ■ James T. Harris, Jr. ■ Claude Heckscher ■ Norman Hill ■ Arthur Kimmelfield ■ Dr. Archie Lacey ■ Jeremy Larner ■ Joann List Levinson ■ John Lewis ■ Leon Modeste ■ Henry Morgenthau, III ■ Dr. William Stuart Nelson ■ Edward Norton ■ Richard J. Schwartz ■ Elaine Slater ■ Rowland Watts

Sincerely yours,

Richard M Klein

Richard M. Klein
For Carl Rachlin

CR:rmk
ENC.

Center on Social Welfare Policy & Law
COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

401 West 117th Street
New York, N. Y. 10027
(212) 280-4112

Lee A. Albert
Project Director

Paul Dodyk
Faculty Director

September 18, 1968

Richard Klein, Esq.
Scholarship, Education and Defense Fund, Inc.
150 Nassau Street
New York, N.Y.

Dear Richard:

Enclosed please find drafts of materials which we intend to use in our suits against the Department of Agriculture. Also enclosed is a copy of the Department's list (the accuracy of which is much in question) of the counties and independent cities without a food program. I have sent the drafts, also, to Fred LeClercq in Atlanta.

If you have any ideas of how to get plaintiffs (and cooperating counsel) in some of the other states, please contact me so that we can pursue your suggestions right away. George Wiley contacted me this morning and he is pleased, by the way, with our progress to this date. I will see him in New Orleans on the weekend of the 28th so that we can plan for the future on this matter.

Sorry about my delinquency in sending these materials somewhat after I had promised -

Best wishes,

Ronny

Ronald Pollack

RP:ap
enc.

EMORY COMMUNITY LEGAL SERVICES CENTER

a legal aid agency of the
Emory University School of Law
1397 Oxford Rd., N.E.
Atlanta, Georgia 30307
Telephone A/C 404 378-7572

September 26, 1968

Mr. Richard M. Klein
Scholarship, Education and Defense
Fund for Racial Equality
164 Madison Avenue
New York, New York 10016

Dear Mr. Klein:

I received your letter of September 15, 1968, upon my return to the office, and will attempt to obtain plaintiffs for you in the South Carolina counties to which you make reference.

I have already contacted the Rev. Mr. I. DeQuincy Newman, requesting his assistance in securing plaintiffs in the counties which you listed. The Rev. Mr. Newman is Field Director of the South Carolina Conference of Branches, National Association for the Advancement of Colored People, and has perhaps more contacts across the state in the black community than any other man I know in South Carolina. If he is unable to secure plaintiffs in any of the counties listed, I will attempt to do so through other friends in South Carolina.

Faithfully yours,

Frederic S. LeClercq

Frederic S. LeClercq,
Director

FSLeC:jsl

A community service project of the Emory University School of Law in cooperation with the Legal Services Program of the U. S. Office of Economic Opportunity

LEGAL SERVICES

513 Counties and 23 Independent Cities Without Operating, Planned or Requested Food Programs - July 31, 1968

Alabama (1)
Morgan

California (16)
Alpine
Butte
Calaveras
Glenn
Mariposa
Mono
Napa
Nevada
Orange
Placer
Riverside
San Benito
San Bernardino
Sierra
Solano
Trinity

Colorado (10)
Baca
Douglas
Eagle
Jackson
Moffat
Park
Pitkin
Rio Blanco
San Juan
Summit

Florida (20)
Brevard
Charlotte
Citrus
Clay
Collier
Flagler
Hernando
Indian River
Manatee
Marion
Martin
Nassau
Okaloosa
Orange
Osceola
Putnam
St. Johns
Sarasota
Seminole
Volusia

Georgia (1)
Troup

Idaho (28)
Ada
Adams
Bear Lake
Blaine
Boise
Bonneville
Butte
Camas
Canyon
Caribou
Cassia
Clark
Custer
Elmore
Franklin
Gem
Gooding
Jefferson
Jerome
Lincoln
Madison
Minidoka
Oneida
Owyhee
Payette
Twin Falls
Valley
Washington

Indiana (3)
Newton
Steuben
White

Iowa (2)
Fayette
Mills

Kansas (82)
Allen
Anderson
Barber
Barton
Brown
Butler
Chase
Chautauqua
Cheyenne
Clay
Cloud

S:ADM:PES:8/2/68

513 Counties and 23 Independent Cities Without Operating, Planned or Requested Food Programs - July 31, 1968

Kansas (con.)	Coffey
	Comanche
	Cowley
	Decatur
	Dickinson
	Doniphan
	Douglas
	Edwards
	Ellis
	Ellsworth
	Finney
	Franklin
	Geary
	Gove
	Graham
	Gray
	Greeley
	Harvey
	Haskell
	Jackson
	Jefferson
	Jewell
	Kiowa
	Lane
	Lincoln
	Linn
	Logan
	Lyon
	McPherson
	Marion
	Mashall
	Miami
	Mitchell
	Montgomery
	Morris
	Morton
	Nemaha
	Neosho
	Ness
	Norton
	Osage
	Osborne
	Ottawa
	Pawnee
	Phillips
	Pottawatomie
	Pratt
	Rawlins
	Reno
	Republic
	Rice
	Riley
Kansas (con.)	Rooks
	Rush
	Russell
	Saline
	Scott
	Seward
	Sheridan
	Smith
	Stafford
	Stanton
	Stevens
	Sumner
	Thomas
	Trego
	Wabaunsee
	Wallace
	Washington
	Wichita
	Woodson
Kentucky (3)	Bourbon
	Harrison
	Woodford
Louisina (3)	Bossier
	Plaquemines
	Terrebonne
Maryland (3)	Calvert
	Howard
	Washington
Massachusetts (3)	Barnstable
	Dukes
	Nantucket
Michigan (1)	Midland
Minnesota (14)	[illegible]
	Clay
	Dodge
	Fillmore
	Freeborn
	Goodhue
	Houston
	McLeod
	Martin
	Olmsted

513 Counties and 23 Independent Cities
Without Operating, Planned or
Requested Food Programs - July 31, 1968

Minnesota (con.)

Rice
Wabasha
Watonwan
Wilkin
Winona

Missouri (52)

Adair
Andrew
Atchison
Audrain
Barry
Barton
Bates
Boone
Callaway
Camden
Carroll
Cass
Cedar
Chariton
Clark
Clinton
Cole
Cooper
Crawford
Franklin
Gasconade
Grundy
Henry
Holt
Howard
Jasper
Johnson
Knox
Laclede
Lafayette
Lawrence
Lincoln
Macon
Miller
Moniteau
Monroe
Montgomery
Morgan
Newton
Pettis
Phelps
Pike
Platte
Pulaski
Randolph
Ray
Ste. Genevieve

Missouri (con.)

Saline
Scotland
Taney
Vernon
Warren

Montana (38)

Beaverhead
Broadwater
Carbon
Carter
Chouteau
Custer
Daniels
Dawson
Fallon
Fergus
Gallatin
Garfield
Golden Valley
Granite
Jefferson
Judith Basin
Liberty
McCone
Madison
Meagher
Mineral
Park
Petroleum
Phillips
Pondera
Powder River
Powell
Prairie
Ravalli
Sanders
Sheridan
Stillwater
Sweet Grass
Teton
Toole
Treasure
Wheatland

Yellowstone

Nebraska (32)

Blaine
Box Butte
Brown
Bu
Ca
Ch
Cherry

513 Counties and 23 Independent Cities
Without Operating, Planned or
Requested Food Programs - July 31, 1968

Nebraska (con.)	Cheyenne
	Colfax
	Dawes
	Deuel
	Dundy
	Fillmore
	Garden
	Grant
	Hamilton
	Hooker
	Jefferson
	Keya Paha
	Kimball
	Nuckolls
	Otoe
	Perkins
	Platte
	Polk
	Red Willow
	Saline
	Seward
	Thomas
	Wayne
	Sioux
Nevada (6)	Douglas
	Esmeralda
	Lander
	Nye
	Storey
	Washoe
New Mexico (1)	Los Alamos
New York (8)	Chenango
	Dutchess
	Ontario
	Orange
	Otsego
	Putnam
	Rockland
	Sullivan
North Carolina (5)	Buncombe
	Lincoln
North Carolina (con.)	Polk
	Randolph
	Stanly
North Dakota (3)	Bowman
	Slope
	Wells
Ohio (10)	Auglaize
	Defiance
	Fairfield
	Hancock
	Henry
	Mercer
	Paulding
	Putnam
	Seneca
	Williams
Oklahoma (4)	Beaver
	Harmon
	Major
	Woods
Oregon (1)	Tillamook
Pennsylvania (2)	Adams
	Pike
Rhode Island (1)	Washington
South Dakota (11)	Butte
	Clay
	Custer
	Fall River
	Harding
	Jones
	Lawrence
	Meade
	Sully
	Stanley
	Yankton
Tennessee (2)	Maury
	Williamson
Texas (107)	Andrews
	Aransas
	Archer
	Armstrong
	Bailey

513 Counties and 23 Independent Cities
Without Operating, Planned or
Requested Food Programs - July 31, 1968

Texas (con.)

Bandera
Baylor
Bell
Blanco
Borden
Bosque
Bowie
Brazoria
Brazos
Briscoe
Burnet
Calhoun
Castro
Chambers
Clay
Coleman
Collin
Collingsworth
Colorado
Comal
Concho
Coryell
Crane
Crockett
Deaf Smith
Denton

Donley
Ector
Edwards
Ellis
Erath

Fort Bend
Gaines
Garza
Gillespie
Glasscock
Gray
Gregg

Hall
Hansford
Harrison
Hartley
Hood
Hopkins
Hunt
Jack
Johnson
Kaufman

Texas (con.)

Kendall
Kenedy
Kerr
Kimble
Lamar
Lampasas
Llano
Loving
Lynn
McCulloch
McMullen
Mason
Menard
Midland
Mills
Mitchell
Montgomery

Navarro
Ochiltree
Oldham
Palo Pinto
Parker
Parmer
Randall
Reagan
Reeves
Refugio
Roberts
Rockwall
Runnels
Rusk
San Saba
Schleicher
Shackelford
Sherman
Sovervell
Stephens
Sterling
Sutton
Taylor
Throckmorton
Upton
Uvalde
Van Zandt
Victoria
Ward
Wharton
Wheeler
Wichita
Winkler

513 Counties and 23 Independent Cities Without Operating, Planned or Requested Food Programs - July 31 1968

Texas (con.)	Wise
	Wood
	Yoakum
	Young
Virginia (36)	Albemarle
	Alleghany
	Arlington
	Augusta
	Bedford
	Botetourt
	Campbell
	Chesterfield
	Clarke
	Culpeper
	Fauquier
	Frederick
	Gloucester
	Hanover
	Henrico
	Henry
	James City
	King George
	King William
	Lancaster
	Loudoun
	Mathews
	Montgomery
	New Kent
	Orange
	Prince George
	Prince William
	Pulaski
	Roanoke
	Rockbridge
	Rockingham
	Shenandoah
	Spotsylvania
	Stafford
	Warren
	York
Virginia (23) (independent cities)	Alexandria
	Buena Vista
Va. (con.)	Charlottesville
	Clifton Forge
	Colonial Heights
	Covington
	Franklin
	Fredericksburg
	Galax
	Harrisonburg
	Hopewell
	Lynchburg
	Martinsville
	Newport News
	Petersburg
	Portsmouth
	Padford
	South Boston
	Staunton
	Suffolk
	Waynesboro
	Williamsburg
	Winchester
Wisconsin (6)	Calumet
	Green Lake
	Jefferson
	Marquette
	Walworth

FOOD STAMP PROGRAM
NET INCOME BASIS OF COUPON ISSUANCE

MONTHLY NET INCOME	MONTHLY			SEMI-MONTHLY		
	PURCHASE	BONUS	TOTAL	PURCHASE	BONUS	TOTAL
			EIGHT-PERSON HOUSEHOLD			
$ 0 - 29.99	$ 3	$83	$86	$ 1.50	$41.50	$43
30 - 39.99	8	78	86	4	39	43
40 - 49.99	14	74	88	7	37	44
50 - 59.99	20	68	88	10	34	44
60 - 69.99	26	64	90	13	32	45
70 - 79.99	32	60	92	16	30	46
80 - 89.99	38	58	96	19	29	48
90 - 99.99	42	56	98	21	28	49
100 - 109.99	46	54	100	23	27	50
110 - 119.99	50	52	102	25	26	51
120 - 129.99	54	50	104	27	25	52
130 - 139.99	58	48	106	29	24	53
140 - 149.99	62	46	108	31	23	54
150 - 169.99	66	44	110	33	22	55
170 - 189.99	70	42	112	35	21	56
190 - 209.99	74	40	114	37	20	57
210 - 229.99	78	38	116	39	19	58
230 - 249.99	82	36	118	41	18	59
250 - 269.99	86	34	120	43	17	60
270 - 289.99	90	34	124	45	17	62
290 - 309.99	94	34	128	47	17	64
310 - 329.99	98	34	132	49	17	66
330 - 349.99	102	34	136	51	17	68
350 - 379.99	106	34	140	53	17	70
380 - 409.99	110	34	144	55	17	72
410 - 439.99	114	34	148	57	17	74
440 - 469.99	118	34	152	59	17	76
470 - 499.99	122	34	156	61	17	78

NOTE: To extend tables for households with incomes above the maximum shown, refer to last page of Basis of Issuance.

[Mississippi]

PERCENTAGE OF PUBLIC ASSISTANCE RECIPIENTS NOT GETTING FOOD STAMPS

Attala County	60.4%	Lincoln County	59.5%
Bolivar County	62.0%	Lowndes County	66.5%
Chickasaw County	65.0%	Madison County	68.8%
Claiborne County	59.3%	Marion County	64.6%
Clay County	53.1%	Monroe County	68.1%
Coahoma County	60.2%	Montgomery County	63.9%
De Soto County	68.7%	Oktibbeha County	63.2%
Forrest County	60.8%	Panola County	72.5%
Grenada County	69.0%	Pike County	53.9%
Harrison County	59.2%	Prentiss County	58.8%
Hinds County	66.1%	Quitman County	75.7%
Holmes County	62.2%	Scott County	61.6%
Humphreys County	64.1%	Simpson County	72.2%
Itawamba County	60.9%	Sunflower County	58.2%
Jackson County	58.7%	Tallahatchie County	58.8%
Jasper County	44.9%	Tunica County	56.0%
Jefferson Davis County	71.0%	Union County	38.1%
Jones County	56.6%	Warren County	66.2%
Lamar County	60.0%	Yalobusha County	57.5%
Lee County	63.2%	Washington County	62.4%
Leflore County	69.5%	Yazoo County	57.6%

[Mississippi]

DROP IN PARTICIPATION IN FEDERAL FOOD ASSISTANCE PROGRAMS AS COUNTIES SWITCHED FROM THE COMMODITIES TO THE FOOD STAMP PROGRAM

County	Persons Receiving Commodities in April 1966	Persons Receiving Food Stamps in October 1968
Attala	6,330	3,405
Bolivar	22,488	15,503
Claiborne	3,507	1,784
Covington	3,769	1,685
Grenada	5,283	1,988
Holmes	15,128	7,149
Jackson	3,350	1,752
Jefferson Davis	5,003	2,449
Leflore	19,427	11,285
Lincoln	5,128	2,140
Marion	4,193	1,743
Monroe	6.079	3,514
Oktibbeha	6,431	2,603
Pike	6,085	2,964
Quitman	9,697	4,295
Scott	4,664	2,476
Sunflower	18,540	7,856
Tallahatchie	11,034	6,710
Warren	4,918	2,684
Yalobusha	3,737	1,709
Yazoo	9,803	5,999

Dept. Alleges no county in State which has neither, planned, requested or operating program

—

According to State of So. Carolina have no program

— No commod. distrib. program

AIKEN
ANDERSON
CHARLESTON
CHEROKEE
FAIRFIELD
GREENVILLE
GREENWOOD
LANCASTER
LEXINGTON
PICKENS
RICHLAND
SPARTANBURG

GEORGIA

TROUP

Please Retain Original Order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- X

SHELDON LIEBOWITZ

Plaintiff,

- against -

JAMES FARMER, HERBERT CALLENDER,
MAJOR OWENS, CONGRESS OF RACIAL
EQUALITY, a/k/l "CORE", JESSIE
GRAY, WILLIAM EPTON, MICHAEL
CRENOVICK, TRI-LINE OFFSET CO. INC.,
PROGRESSIVE LABOR MOVEMENT AND
HARLEM DEFENSE COUNCIL, RAY WILLIAMS,
NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, a/k/l "NAACP"

Defendants,

- X

James Farmer
38 Park Row

38 Park Row

Plaintiff, complaining of the defendants by his attorneys, Saxe, Bacon & Bolan, alleges:

1. At all times hereinafter mentioned, plaintiff was and now is a resident of the State of New York.

2. At all times hereinafter mentioned, the defendant, JAMES FARMER, was and still is a resident of the State of New York and is National Director of defendant, CONGRESS OF RACIAL EQUALITY, INC., also know as and hereinafter referred to as CORE.

3. At all times hereinafter mentioned, defendant HERBERT CALLENDER, was and still is a resident of the State of New York and is Field Secretary of defendant CONGRESS OF RACIAL EQUALITY, INC., also known as and hereinafter referred to as CORE.

4. At all times hereinafter mentioned defendant MAJOR OWENS, was and still is a resident of the State of New York and is the Chairman of defendant CONGRESS OF RACIAL EQUALITY INC.'S office, also known as and hereinafter referred to as CORE.

5. Upon information and belief, at all times hereinafter mentioned, the defendant, CORE was and now is a corporation duly organized and existing under the laws of the State of New York, with offices in the City, County and State of New York.

6. At all times hereinafter mentioned, the defendant JESSIE GRAY was and now is a resident of the State of New York.

7. Upon information and belief, at all times hereinafter mentioned, the defendant WILLIAM EPTON was and still is a resident of the County, City and State of New York and Chairman of the defendant, PROGRESSIVE LABOR MOVEMENT and a member of the defendant HARLEM DEFENSE COUNCIL.

8. Upon information and belief, at all times hereinafter mentioned, the defendant, MICHAEL CRENOVICK was and still is a resident of the County, City and State of New York, and President of defendant, TRI-LINE OFFSET CO., INC.

9. Upon information and belief, the defendant, TRI-LINE OFFSET CO.,INC., is a domestic corporation, organized and existing under the laws of the State of New York and with an office for doing business in the County, City and State of New York.

10. Upon information and belief, at all times hereinafter mentioned, the PROGRESSIVE LABOR MOVEMENT is a voluntary unincorporated association, duly organized and existing under the laws of the State of New York with an office for doing business in the County, City and State of New York.

11. Upon information and belief, at all times hereinafter mentioned, the defendant, HARLEM DEFENSE COUNCIL, was and now is a subsidiary under the control and direction of the PROGRESSIVE LABOR MOVEMENT with an office for doing business in the County, City and State of New York.

12. Upon information and belief, at all times hereinafter mentioned, defendant RAY WILLIAMS, was and still is a resident of the State of New York and is an officer of defendant NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE also known as and hereinafter referred to as NAACP.

13. Upon information and belief, at all times hereinafter mentioned, the defendant NAACP, was and now is a corporation duly organized and existing under the laws of the State of New York, with offices in the City, County and State of New York.

14. Plaintiff, at all times hereinafter mentioned, was and still is a Police Officer in the Police Department of the City of New York, and has been a policeman for the last $1^1/_2$ years.

15. Prior to the time complained of herein, plaintiff enjoyed an outstanding and excellent reputation for competency, intelligence, honesty, integrity and valor, both as a man and as a policeman in the Police Department of the City of New York.

16. Since in or about July, 1965, the defendants conspired and maliciously and wilfully participated in a plan and course of action designed to defame and injure the plaintiff in his good name and reputation in his profession as a policeman, to destroy his income and livelihood, and to remove plaintiff as a police officer in the Police Department of the City of New York.

17. In pursuance of the said conspiracy and plan and on or about the 19th day of July, 1965, defendant, HARLEM DEFENSE COUNCIL published, and upon information and belief, the defendants, FARMER, CORE, GRAY, EPTON, CRENOVICK, TRI-LINE OFFSET CO., INC., and PROGRESSIVE LABOR MOVEMENT, participated in the preparation and publication of the following false, scandalous, derogatory, infamous, malicious and libelous article, placard, poster or handbill, of and concerning the plaintiff, a copy of which annexed hereto, marked Exhibit A and made part hereof :

WANTED

for

MURDER

(A Picture of Plaintiff in his
New York Police uniform)

Liebowitz, the Cop
Ptl. Sheldon Liebowitz of the
Grand Avenue Precinct

Harlem Defense Council
107 West 116th St., NYC

18. That the said words on the placard, poster or handbill, "Wanted For Murder" were published by defendants with reason to believe the same to be false and with actual malice toward plaintiff pursuant to a previously existing policy on the part of defendants, and with the intent and for the purpose of exposing plaintiff to hatred, contempt, ridicule and aversion and to injure and dishonor him in his character as a man and in his capacity as a policeman for the Police Department of the City of New York.

19. That defendants, their servants, agents and employees wrongfully, negligently and carelessly failed and omitted to make investigation as to the truth of the said statement "Wanted For Murder" prior to the printing, publication and circulation thereof and the same was printed, published and circulated by defendants as aforesaid unlawfully and in wanton and reckless disregard to the plaintiff's rights.

20. That by the printing, publication and circulation of the aforesaid false and defamatory placard, poster or handbill "Wanted For Murder", defendants did intend to convey that plaintiff had committed the crime of murder and expose the plaintiff to hatred, contempt, ridicule and aversion and to impugn his character, reputation, ability and standing as a man and in his capacity as a policeman in the Police Department of the City of New York.

21. By reason of the publication as aforesaid, plaintiff has been injured in his good name, character and reputation both as a man and as a policeman and in his feelings, mind and body and has been held up to ridicule and contempt by his friends, acquaintances and the public and that his ability and standing as a man and as a policeman have been irreparably injured; and that the said publication has induced an evil opinion of said plaintiff in the minds of the public all to his damage in the sum of $2, 500,000.00.

WHEREFORE, plaintiff demands judgment against these defendants in the amount of $2,500,000.00, together with costs and disbursements of this action.

SAXE, BACON & BOLAN
Attorneys for Plaintiff
Office & P.O. Address
598 Madison Avenue
New York, New York 10022

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SHELDON LIEBOWITZ, being duly sworn, deposes and says that deponent is the plaintiff in the within action; that deponent has read the foregoing complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, deponent believes it to be true.

Sworn to before me, this
19t day of October 1965

SHELDON LIEBOWITZ

Notary Public

JOHN F. LANG
Notary Public, State of New York
No. 41-2248932
Qualified in Queens County
Term Expires March 30, 1967

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- -x

SHELDON LIEBOWITZ :

Plaintiff, :

- against - :

JAMES FARMER, HERBERT CALLENDER, :
MAJOR OWENS, CONGRESS OF RACIAL
EQUALITY, a/k/l "CORE", JESSIE :
GRAY, WILLIAM EPTON, MICHAEL
CREBOVICK, TRI-LINE OFFSET CO. INC., :
PROGRESSIVE LABOR MOVEMENT AND
HARLEM DEFENSE COUNCIL, RAY WILLIAMS, :
NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, a/k/l "NAACP" :

Defendants, :

- -x

Notice of Motion
Index No. 17506/65

[illegible] 12/20
Adjourned to
on 5
page 6 & 7

Sirs:

Please take notice that upon the complaint herein and the annexed affidavit of John A. Morsell, a motion will be made by the defendant National Association for the Advancement of Colored People at a Special Term, Part I, of the Supreme Court, County of New York, to be held in the City of New York at the County Courthouse, 60 Centre Street on the 20th day of December 1965 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for judgment dismissing the complaint herein as against the defendant National Association for the Advancement of Colored People, pursuant to Rule 3211 (a) (7) of the New York Civil Practice Law and Rules, and for such other, further and different relief as may be proper, together with costs of this motion, on the ground that the sole reason

For including the National Association for the Advancement of Colored People as a defendant in the above-entitled cause is plaintiff's allegation and belief that defendant Ray Williams is an officer thereof and the same being false, the complaint fails to state a cause against defendant National Association for the Advancement of Colored People. It is requested that answering affidavits be served at least 5 days before the motion day.

Dated: November 7, 1965

Robert L. Carter
Maria L. Marcus
Barbara A. Morris
Lewis Steel
Joan Franklin
20 West 40th Street
New York, New York 10018

Attorneys for Defendant
National Association for the
Advancement of Colored People

TO: Saxe, Bacon & Bolan,
598 Madison Avenue
New York, New York 10022

Attorneys for Plaintiff

C 184 Summons without Notice, Blank Court. 4-64.
Personal or Substituted Service.

c

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SHELDON LIEBOWITZ

Plaintiff

against

JAMES FARMER, et ano.

Defendant

Index No. 17506/65

Plaintiff designates
New York County
County as the place of trial

The basis of the venue is defendant'
principal place of business
is in New York

Summons

Plaintiff resides at
928 Avenue S
County of Kings

To the above named Defendant

You are hereby summoned *to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.*

Dated, New York, New York, November 11, 1965

SAXE, BACON & BOLAN
Attorney(s) for Plaintiff
Office and Post Office Address
598 Madison Avenue
New York, N.Y. 10022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- x

SHELDON LIEBOWITZ

Plaintiff,

- against -

JAMES FARMER, HERBERT CALLENDER, MAJOR OWENS, CONGRESS OF RACIAL EQUALITY, a/k/l "CORE", JESSIE GRAY, WILLIAM EPTON, MICHAEL CRENOVICK, TRI-LINE OFFSET CO. INC., PROGRESSIVE LABOR MOVEMENT AND HARLEM DEFENSE COUNCIL, RAY WILLIAMS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a/k/l "NAACP"

Defendants.

- x

STIPULATION

IT IS HEREBY STIPULATED AND AGREED that the time of defendants James Farmer, Herbert Callender, Major Owens and CORE--Congress of Racial Equality, Inc. within which to move or answer be, and hereby is, extended to within ten days after plaintiff's written demand therefor.

December 2, 1965.

Saxe Bacon & Bolan

Attorneys for Plaintiff

Attorney for Defendants
Farmer, Callender, Owens
and CORE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SHELDON LIEBOWITZ, Plaintiff, - against - JAMES FARMER, HERBERT CALLENDER, MAJOR OWENS, CONGRESS OF RACIAL EQUALITY, a/k/l "CORE", JESSIE GRAY, WILLIAM EPTON, MICHAEL CRENOVICK, TRI-LINE OFFSET CO. INC., PROGRESSIVE LABOR MOVEMENT AND HARLEM DEFENSE COUNCIL, RAY WILLIAMS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a/k/l "NAACP" Defendants.	NOTICE OF APPEARANCE

SIRS:

PLEASE TAKE NOTICE that defendants James Farmer, Herbert Callender, Major Owens and CORE--Congress of Racial Equality, Inc. (designated above as Congress of Racial Equality, a/k/l "CORE") appear in the above-entitled action by their undersigned attorney and request that copies of all papers in this action be served upon said attorney at his office designated below.

December 2, 1965.

Yours, etc.,

DENISON RAY,
Attorney for Defendants
James Farmer, Herbert
Callender, Major Owens and
CORE--Congress of Racial
Equality, Inc.,
1 Chase Manhattan Plaza,
New York, N. Y. 10005

TO:

MESSRS. SAXE, BACON & BOLAN,
Attorneys for Plaintiff,
598 Madison Avenue,
New York, N. Y. 10022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- X

SHELDON LIEBOWITZ,

Plaintiff,

- against -

JAMES FARMER, HERBERT CALLENDER,
MAJOR OWENS, CONGRESS OF RACIAL
EQUALITY, a/k/a "CORE", JESSIE
GRAY, WILLIAM EPTON, MICHAEL
CRENOVICH, TRI-LINE OFFSET CO. INC.,
PROGRESSIVE LABOR MOVEMENT AND
HARLEM DEFENSE COUNCIL, RAY WILLIAMS,
NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, a/k/a "NAACP",

Defendants.

- X

AFFIDAVIT

Index No. 17506/65

STATE OF NEW YORK)
)SS.:
COUNTY OF NEW YORK)

JOHN A. MORSELL, being of full age and duly sworn, deposes and says:

1. He is the Assistant Executive Director of the National Association for the Advancement of Colored People (hereinafter referred to as NAACP), named as a defendant in the above-entitled cause.

2. On November 17, 1965, the summons and complaint in the above-entitled cause was served on Mrs. Mable Smith, secretary to the Board of Directors of the defendant NAACP, and the time for the defendant NAACP to answer or move in respect to the complaint expires on the 7th day of December, 1965.

3. The complaint of Sheldon Liebowitz alleges that the defendant Ray Williams is an officer of the defendant NAACP (Complaint, Para. 12); that all of the named defendants in the above-entitled cause in June, 1965, conspired maliciously and willfully participated in a plan and course of action designed to defame and injure the plaintiff in his good name and reputation in his profession as policeman, to destroy his income and livelihood and to remove plaintiff as a police officer in the Police Department in the City of New York (Complaint, Para. 16); and that in pursuance of the said conspiracy and plan in or about the 19th of July, 1965, defendant Harlem Defense Council published, and upon information and belief the defendants Farmer, CORE, Gray, Epton, Crenovick, Tri-Line Offset Company, Inc. and the Progressive Labor Movement participated in the preparation and publication of the article, placard, poster or handbill alleged to be libelous and set forth as Exhibit A of the complaint; that plaintiff as a result of the alleged publication of the allegedly libelous article suffered damages and demands judgment for $2,500,000.00, together with costs and disbursements of this action.

4. For the following reasons, the defendant NAACP moves, pursuant to Rule 3211(a)(7) of the New York Civil Practice Law and Rules, that the complaint against it be dismissed for failure to state a cause of action:

The defendant NAACP is a New York corporation located at 20 West 40th Street, New York, New York. The officers of the defendant NAACP consist of a President, Chairman and Vice Chairman of the Board of Directors, such Vice Presidents as the Board of Directors may elect, a Treasurer, an Executive Secretary, and such other officers as the Board of Directors from time to time may designate and elect. In joining this defendant in this cause, plaintiff relies upon the information contained in paragraph 12 of the complaint, which erroneously describes defendant Ray Williams as an officer of the defendant NAACP. The defendant Ray Williams neither is nor was an officer of the defendant NAACP, in or about July 1965.

This affidavit is made by the deponent and not by the Executive Director, Mr. Roy Wilkins, who is an officer of the defendant NAACP, because Mr. Wilkins is presently absent from the state.

/s/ John A. Morsell
Assistant Executive Director

Sworn to before me this
7th day of December, 1965.

/s/ Princese L. Hutcherson

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

JOHN A. MORSELL, being duly sworn, deposes and says that he is the Assistant Executive Director of the defendant herein and that he has read the foregoing affidavit and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason this verificatio is made by deponent and not by the defendant NAACP is because the said defendant is a corporation, and the Executive Director, Mr. Roy Wilkins, an officer thereof, is absent from the state and under such circumstances deponent is empowered to act in his stead.

The grounds of deponent's belief as to all matters in the said affidavit not stated upon his own knowledge, are investigations which deponent has caused to be made concerning the subject matter of affidavit and information acquired by deponent in the course of his duties as the Assistant Executive Director of the said corporation and from the books and papers of said corporation.

/s/ John A. Morsell
Assistant Executive Director

Sworn to before me this
7th day of December, 1965.

/s/ Princess E. Hutcherson

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

Joan Franklin, being duly sworn, deposes and says, that on the 7th day of December, 1965, she served a copy of the foregoing Notice of Motion and Affidavit upon Saxe, Bacon & Bolan, of 598 Madison Avenue, New York, New York 10022, to her known to be the Attorneys for the Plaintiff in the within entitled action, by depositing same, properly enclosed in a postpaid wrapper, in a Post Office Box regularly maintained by the Government of the United States at 20 West 40th Street, Borough of Manhattan, City of New York, directed to said attorneys at the above given address which was designated by them for that purpose upon the preceding papers in this action.

/s/ Joan Franklin

Sworn to before me this
7th day of December, 1965.

/s/ Princene L. Hutcherson

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---x

SHELDON LIEBOWITZ,

Plaintiff,

-against-

JAMES FARMER, HERBERT CALLENDER,
MAJOR OWENS, CONGRESS OF RACIAL
EQUALITY, a/k/1/"CORE", JESSIE
GRAY, WILLIAM EPTON, MICHAEL
CRENOVICK, TRI-LINE OFFSET CO. INC.,
PROGRESSIVE LABOR MOVEMENT AND
HARLEM DEFENSE COUNCIL, RAY WILLIAMS,
NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, a/k/1/"NAACP",

Defendants.

AFFIDAVIT

---x

STATE OF NEWYORK)
: ss.
COUNTY OF NEW YORK)

SHELDON LIEBOWITZ, being duly sworn, deposes and says:

1. I am the plaintiff in the above entitled action and make this affidavit in opposition to the defendant NAACP's motion to dismiss the complaint pursuant to CPLR Rule 3211 (a) (7), for legal insufficiency.

2. I am a Police Officer in The Police Department of The City of New York and have been employed as a policeman for the last 1 1/2 years.

3. On the morning of July 15, 1965 in the course of performing my duties as a Police Officer to maintain the peace and order I was required to apprehend one Nelson Kirby on charges of disorderly conduct. While placing handcuffs

on said Erby the handcuffs broke loose and Erby attacked me physically. In resisting Erby's assault in self-defense, I was required to shoot Erby.

4. Then on or about the 20th day of July, 1965 a poster, placard or handbill containing a photograph of me in my police uniform and the words "WANTED FOR MURDER" was published and circulated.

5. I thereafter commenced the instant defamation action alleging that the defendant NAACP did conspire with the other defendants in a plan or scheme to defame me by preparing, publishing and circulating the aforementioned poster, placard or handbill.

6. My assertion that the defendant NAACP was part of the conspiracy is based on the fact that when various news media interviewed persons carrying the placards, or distributing the handbills containing a photograph of me in my police uniform and the words "WANTED FOR MURDER", many of these persons indicated that they were acting as members of the National Association for the Advancement of Colored People.

7. I have no personal knowledge, however, of the exact extent to which the defendant NAACP participated in the conspiracy as this information is exclusively within the knowledge of these defendants.

8. However, on July 24, 1965 the NAACP's Ray Williams in a statement in The Amsterdam News, Volume XLIV, Number 26 on page 30 stated:

> "From the information of three persons, I have personally talked to concerning the incident

> the two or more shots the officer fired into Erby when he lay prone on the ground, after receiving help apparently from civilians, was an act of deliberation which warrants criminal prosecution." (annexed hereto and attached as Exhibit "A").

9. I am informed by my attorneys and believe that under these circumstances the defendant NAACP's motion should be denied.

WHEREFORE it is respectfully requested that the defendant NAACP's motion pursuant to CPLR Section 3211 (a) (7), be in all respects denied.

SHELDON LIEBOWITZ

Sworn to before me this
day of December, 1965.

Notary Public.

[illegible]
Notary Public, State of New York
[illegible]
[illegible]
Term Expires March [illegible] 1967

Amsterdam News
July 24, 1965
Page 50

—Witness

(Continued from Page 27)

feet and ran a short distance, stumbling into a dry goods store in search of refuge.

Meanwhile, a published report that a Negro employee of a store near the scene of last week's fatal shooting was threatened with bodily harm if he dared to appear as a grand jury witness brought angry denial from CORE officials.

The man claimed a CORE member took a picture of him and told him he would have to join the organization "or else."

Major Owens, Brooklyn CORE chapter chairman and Herbert Callender, field secretary, branded the report as "ridiculous."

"We don't conduct membership drives by using threats. It's not our way of playing ball," declared Callender.

Wants Cop Suspended

Callender pointed out that he has been interviewing people in Brooklyn since the day of the slaying and encouraging them to go down and tell what they saw.

He said CORE has taken the position that Leibowitz should be suspended during the investigation, and that there should be an indictment against him. Leibowitz has been on the force since April 1964.

". . Warrants Criminal Prosecution"

NAACP's Ray Williams, in preparing statements taken from eye witnesses, said he feels the patrolman "acted in excess of his authority."

"From the information of those persons I have personally talked to concerning the incident," he said, "the two or more shots the officer fired into Erby when he lay prone on the ground, after receiving help apparently from civilians, was an act of deliberation which warrants criminal prosecution."

EXHIBIT " A "

THE FOLLOWING PAGES ARE THE BEST
AVAILABLE.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---X

SHELDON LIEBOWITZ,

Plaintiff,

-against-

JAMES FARMER, HERBERT CALLENDER, MAJOR
OWENS OF RACIAL EQUALITY, a/k/a "CORE",
JESSIE GRAY, WILLIAM EPTON, MICHAEL
CRENOVICH, TRI-LINE OFFSET CO., INC.,
PROGRESSIVE LABOR MOVEMENT AND HARLEM
DEFENSE COUNCIL, RAY WILLIAMS, NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, a/k/a "NAACP",

Defendants.

---X

AFFIDAVIT

INDEX NO.
17508/65

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

JOHN F. LANG, being duly sworn, deposes and says:

I am attorney at law associated with Saxe, Bacon & Bolan, attorneys for the plaintiff and submit this affidavit in opposition to the defendant, National Association for the Advancement of Colored People (NAACP) motion pursuant to Civil Practice Law and Rules, Rule 3211 (a) (7).

In substance this action was brought against the defendants including the NAACP for conspiring to defame the plaintiff in that pursuant to a plan or scheme the defendants prepared, printed, published and circulated a poster, placard or handbill, containing a photograph of the plaintiff in his police uniform and the words "WANTED FOR MURDER".

The affidavit of John A. Morsell, Assistant Executive Director of the NAACP states on pages 2 and 3, as a basis for dismissing the complaint against the NAACP. "In joining this defendant in this cause, plaintiff relies upon the information contained in paragraph 12 of the complaint, which erroneously describes defendant Ray Williams as an officer of the defendant, NAACP. The defendant, Ray Williams neither is nor was an officer of the defendant NAACP in or about July, 1965."

The defendant NAACP in their moving papers nowhere deals with nor attempts to refute the allegations concerning the conspiracy of the defendants to defame Patrolman Liebowitz as set out in paragraphs 16, 19 and 20 of plaintiff's complaint. The basis of plaintiff's complaint against the defendant, NAACP is not solely that Ray Williams was a member or officer, but that the defendant NAACP conspired with the other defendants in preparing printing, publishing or circulating the poster placard, or handbill complained of or of participating in any way with the other defendants in the preparation, printing, publication or circulation of said poster, placard or handbill.

The affidavit made in behalf of the defendant NAACP denies that the NAACP conspired with the other defendants in preparing, printing, publishing or circulating the poster, placard or handbill complained of in this case or of participating in any way with the other defendants in the preparation, printing, publication or circulation of said poster, placard or handbill. It is on the basis of this denial that the defendant NAACP seeks a dismissal of the complaint.

The plaintiff in an affidavit submitted in opposition to the instant motion has indicated that he is without personal knowledge of the exact extent of the defendant NAACP's participation in the conspiracy since this information is exclusively within the knowledge of the aforementioned defendants. However, plaintiff does assert that to his knowledge, the defendant NAACP was part of the conspiracy in that many persons carrying placards or distributing handbills when interviewed by news media indicated they were members of and acting for the NAACP.

Inasmuch as affidavits have been submitted, the instant motion must be considered a motion for summary judgment. (CPLR, Rule 3211 (c)).

Conspiracies by their nature are usually entered into in secret and thus the essential facts with regard thereto are generally exclusively within the knowledge of the conspiring parties (cf. Bedard v. La Bier, 20 Misc. 2d 614). [illegible]

The rule is that summary judgment should not be granted if the essential facts involved are apparently exclusively within the knowledge of one of the parties, and the other party does not and cannot controvert the factual assertions of the party with knowledge. (Hughes v. Rowland Distributors, Inc., 15 A.D. 2d 926; O'Neil v. [illegible], 40 Misc. 2d 346; [illegible] v. [illegible], 202 N. Y. 2d 464).

Since the essential facts with regard to the conspiracy here are apparently exclusively within the knowledge of the defendant National Association for the Advancement of Colored People, the instant motion should be denied.

WHEREFORE, it is respectfully requested that the defendants motion pursuant to Civil Practice Law and Rules, Rule 3211 (a) (7) be in all respects denied.

JOHN F. LARD

Sworn to before me this

day of December, 1965

[illegible]
Notary Public, State of New York
[illegible]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SHELDON LIEBOWITZ,

Plaintiff,

-against-

JAMES FARMER, HERBERT CALLENDER, MAJOR
OWENS OF RACIAL EQUALITY, a/k/a "CORE",
JESSIE GRAY, WILLIAM EPTON, MICHAEL
CRENOVICH, TRI-LINE OFFSET CO., INC.,
PROGRESSIVE LABOR MOVEMENT AND HARLEM
DEFENSE COUNCIL, RAY WILLIAMS, NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, a/k/a "NAACP",

Defendants.

DEFENDANT'S REPLY TO PLAINTIFF'S AFFIDAVITS IN OPPOSITION TO THE MOTION TO DISMISS

Robert L. Carter
Maria L. Marcus
Barbara A. Morris
Lewis M. Steel
Joan Franklin
20 West 40 Street
New York, New York 10018

Attorneys for Defendant
National Association for the
Advancement of Colored People

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SHELDON LIEBOWITZ,

Plaintiff,

-against-

JAMES FARMER, HERBERT CALLENDER, MAJOR
OWENS OF RACIAL EQUALITY, a/1/1 "CORE",
JESSIE GRAY, WILLIAM EPTON, MICHAEL
CRENOVICK, TRI-LINE OFFSET CO., INC.,
PROGRESSIVE LABOR MOVEMENT AND HARLEM
DEFENSE COUNCIL, RAY WILLIAMS, NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, a/k/1/ "NAACP",

Defendants.

STATEMENT

On December 7, 1965 pursuant to Rule 3211 (a) (7) C.P.L.R., this defendant served on plaintiff a Notice of Motion to Dismiss the Complaint and the affidavit of John A. Morsell in support thereof. A memorandum in support of the motion was served on plaintiff's attorney on December 28, and on December 30, the affidavits of John F. Lang, attorney for plaintiff, and Sheldon Liebowitz the plaintiff, in opposition to the motion to dismiss were served on this defendant. The following memorandum is in response thereto.

ARGUMENT

I.

In the motion to dismiss, it was asserted that the sole basis for joining the NAACP as a defendant herein was plaintiff's assumption that one Ray Williams was its officer on or about July 1965. The affidavit of John A. Morsell, the

Assistant Executive Director of the NAACP was submitted, stating that Williams was not at the time in question and is not now an officer of this corporation. The plaintiff now attempts to avoid the facts of this affidavit by assertions in the affidavits in opposition to the motion to the effect that this action against the NAACP is predicated on Williams and other persons, who are not identified by name, being members of the NAACP and having participated in the alleged libel of plaintiff. (Affidavit of John F. Lang, p. 2; affidavit of Sheldon Liebowitz, para. 6 and 7 and Ex. A thereto).

There are several objections to these affidavits. Firstly, the statements contained therein seeking to justify the retention of the NAACP as a defendant in this cause are clearly not based on the personal knowledge of the affiants, but refer to either statements reputedly made to anonymous persons who were connected with news media or to a newspaper article. Hence, they must be disregarded as hearsay and totally incompetent. *Goldstein v. Siegel*, 80 N.Y.S. 2d 598 (S.Ct. N.Y. Co. 1948); Niemann v. Cohen, 22 A.D. 2d 770, 253 N.Y.S. 2d 723 (1st Dept. 1964).

Secondly, assuming *arguendo*, that these statements constitute competent evidence, there would be no basis for denying the motion to dismiss. In effect, by contending that the basis for the NAACP being made a defendant in this action is the *membership* of Ray Williams and other persons in this organization rather than the *officership* of Ray Williams as alleged in the complaint, plaintiff is attempting to amend his complaint without the benefit of new pleadings. This is contrary to Rule 3013 C.P.L.R. which requires that statements in a *pleading* be sufficient particularly to give the court and parties notice of the transactions or occurrences intended to be proved and the material elements of each cause of action. A party cannot be made to file an answer to a collection of allegations contained in papers in opposition to a motion.

Thirdly, even should plaintiff's assertion be considered a part of the complaint, the mere allegation that some members of the NAACP participated in the conduct complained of would be ineffective to bind the corporation. The NAACP has a membership exceeding 300,000 persons, many of whom are associated with other organizations and perform multiple roles. Clearly, a corporation is not responsible for each and every action of all persons affiliated with it. *Corrigan v. Bobbs-Merrill*, 228 N.Y. 58 (1920).

A corporation acts through its officers and even where a litigant seeks to hold the corporation responsible for the alleged libelous conduct of its officers, it is necessary to allege that such conduct was specifically authorized or within the scope of employment or ratified by the corporation or to make other averments logically leading to that conclusion. *Flanagan v. McDermott Dairy Co.*, 132 App. Div. 166, 116 N.Y.S. 814 (1st Dept. 1909); *Starr v. United Artists Corp.*, 20 Misc. 2d 636, aff'd 10 A.D. 2d 836, 200 N.Y.S. 2d 356 (1st Dept. 1960). (See defendant's memorandum in support of motion to dismiss, argument, Point B). Accordingly, the opposing affidavits are insufficient to sustain any claim against this defendant.

II.

Plaintiff also argues that the essential facts regarding the conspiracy to defame him as alleged generally in the complaint are within the exclusive knowledge of this defendant and on that basis alone the motion to dismiss must be denied. (Affidavit of John F. Lang, p. 3). In its memorandum in support of the motion, point C, p. 3, this defendant disposes of the underlying assumption of that contention . There is no tort of conspiracy. *Goldstein v. Siegel*, 19 A.D. 2d 489, 244 N.Y.S. 2d 378 (1st Dept. 1963). See other case cited in the above-referred to memorandum.

Moreover, assuming *arguendo* that a conspiracy to commit a tort--which is the only claim the plaintiff alleges against the NAACP (complaint, para. 17)--constituted a tort and that the facts of the alleged conspiracy were within the exclusive knowledge of this defendant, this is not a basis for denying the motion to dismiss. The plaintiff's belief that an examination before trial may develop facts and evidence to aid and assist him in the trial of his case is no answer to a motion for summary judgment; such evidence must be produced and presented in opposition to the motion. *Goldstein v. Siegel*, 80 N.Y.S. 2d 598 (S. Ct. N.Y. Co. 1948).

The cases cited by the defendant as indicating the contrary are clearly inapposite to the present case. In *Hughes v. Rowland Distributors, Inc.*, 15 A.D. 2d 994, the court refused to grant the defendant's motion for summary judgment on the theory that plaintiff had cited ultimate facts sufficient to state a cause of action and, hence, summary judgment could not be used to deny the plaintiff the right to inquire into the extent of his claim, a fact which was exclusively within the knowledge of the movant.

The complaint in the present case is most notable for the absence of allegations of ultimate fact and here, plaintiff seeks to use discovery not to define the extent of a legally sufficient claim against the defendant, but to fish for facts to establish a cause of action. *O'Neill v. Kappmasser*, 40 Misc. 2d 848, 243 N.Y.S. 2d 712 (S. Ct. Ontario Co. 1963) and *[illegible] v. Anderson*, 202 N.Y.S. 2d 434 (S. Ct. Nassau Co. 1960) are similarly insufficient to aid the plaintiff. Summary judgment in those cases was denied on the basis of conflicting fact. There is no conflict of facts in this case, but the utter absence of facts in the complaint and plaintiff's affidavits to sustain any cause of action which underly this motion to dismiss.

CONCLUSION

For the foregoing reasons and those contained in defendant's previous memorandum, it is requested that the motion to dismiss the complaint be granted.

Respectfully submitted,

Robert L. Carter
Maria L. Marcus
Barbara A. Morris
Lewis M. Steel
Joan Franklin
20 West 40 Street
New York, New York 10018

Attorneys for Defendant
National Association for the
Advancement of Colored People

CERTIFICATE OF SERVICE

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK

JOAN FRANKLIN, of lawful age, being first duly sworn on her oath, states that she served a copy of the foregoing Reply to Plaintiff's Affidavits in Opposition to the Motion to Dismiss upon Saxe, Bacon and Bolan, Esqs., attorneys for plaintiff, 593 Madison Avenue, New York, New York, by United States first-class mail, postage prepaid, on this 5th day of January, 1966.

Joan Franklin

Sworn to before me this

5th day of January, 1966.

__Liebowitz v. Farmer__ - Opinion of Justice Gellner
January 13,1966 (New York Law Journal)

[The recitation of facts is omitted]

There is no allegation or statement of authority, authorization or ratification to connect NAAACP as an organization with the alleged acts. Even an officer's participation in the conduct complained of would not cast liability upon the corporate entity unless it was within the scope of his employment and authority or was specifically authorized nor ratified. Participation by individual members could not be the basis for imposing corporate responsibility in the absence of specific authorization, particularly with regard to such an organization as NAACP having a membership of over 300,000. And, clearly, self-serving statements by alleged agents as to their authority, and, moreover, in the form of hearsay, are inadmissible. There is no tort of conspiracy (__Goldstein v. Siegel__, 19 App.Div. 2d 489). The tort here is libel. The question is whether any act on NAACP's part is shown or factually alleged to connect it as an organization with the planning, preparation or publication of the alleged libel. The bare, conclusory and unsupported allegation of conspiracy by the defendants is wholly insufficient to hold NAACP. The motion is accordingly granted and the complaint dismissed as against NAACP. Settle order.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- x

SHELDON LIEBOWITZ,

Plaintiff,

- against -

JAMES FARMER, HERBERT CALLENDER, MAJOR OWENS, CONGRESS OF RACIAL EQUALITY, a/k/a "CORE", JESSIE GRAY, WILLIAN EPTON, MICHAEL CREMOVICK, TRI-LINE OFFSET CO. INC., PROGRESSIVE LABOR MOVEMENT AND HARLEM DEFENSE COUNCIL, RAY WILLIAMS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a/k/a "NAACP",

Defendants.

- x

Notice of Order
For Settlement
Index No. [illegible]

S I R S :

PLEASE take notice that pursuant to the decision of January 13, 1966, the order in the above entitled case will be settled on February 8. Attached hereto is a copy of defendant NAACP's proposed order.

Dated: February 3, 1966
New York, New York

Yours etc.,

Robert L. Carter
Maria L. Marcus
Barbara A. Morris
Lewis M. Steel
Joan Franklin
20 West 40th Street
New York, New York 10018
Attorneys for Defendant

TO:

Saxe, Bacon & Bolan
598 Madison Avenue
New York, New York 10022
Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---x

SHELDON LIEBOWITZ, :

Plaintiff, :

-against- :

JAMES FARMER, HERBERT CALLENDER, :
MAJOR OWENS, CONGRESS OF RACIAL
EQUALITY, a/k/a "CORE," JESSIE :
GRAY, WILLIAM EPTON, MICHAEL
CRENOVICK, TRI-LINE OFFSET CO. INC., :
PROGRESSIVE LABOR MOVEMENT AND
HARLEM DEFENSE COUNCIL, RAY WILLIAMS, :
NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, a/k/a "NAACP", :

Defendants. :

---x

ORDER

Index No. 17506/65

PRESENT: Hon. Abraham N. Geller, Justice.

The above-named defendant, NAACP, having moved for an order dismissing the complaint herein under Rule 3211 of the Civil Practice Law and Rules upon the ground that it failed to state a cause of action against the NAACP and said motion having duly come on to be heard,

NOW upon reading and filing the notice of motion herein, dated the 7th day of December, 1965, with proof of due service thereof, the affidavit of John A. Morsell, duly sworn to December 7, 1965, and the copy of the complaint thereto annexed, all of which were submitted by defendant in support of this motion; and upon reading and filing the affidavits of John F. Lang and Sheldon Liebowitz, sworn to the 30th and 29th day of December, 1965, respectively, in opposition to the motion,

NOW after having had all the papers in support of and in opposition to the motion submitted and due deliberation having been had, it is, on motion of the attorneys for defendant NAACP,

ORDERED that said motion be and the same hereby is in all respects granted; and it is further

ORDERED that judgment be entered herein dismissing said complaint with prejudice and with ten dollars costs of this motion.

Signed this day of 1966, at New York.

Enter

Abraham N. Geller
Justice, Supreme Court
New York County

CERTIFICATE OF SERVICE

STATE OF NEW YORK)
ss.
COUNTY OF NEW YORK)

JOAN FRANKLIN, of lawful age, being first duly sworn on her oath, states that she served a copy of the foregoing Notice of Order for Settlement and Order upon Saxe, Bacon and Bolan, Esqs., attorneys for plaintiff, 598 Madison Avenue, New York, New York, by United States first-class mail, postage prepaid, on this 3rd day of February, 1986.

Joan Franklin

Sworn before me this
3rd day of February, 1986.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- x

SHELDON LIEBOWITZ

Plaintiff, :

:

- against -

:

JAMES FARMER, HERBERT CALLENDER, : Index No. 17906/65
MAJOR OWENS, CONGRESS OF RACIAL :
EQUALITY, a/k/1 "CORE". JESSIE
GRAY, WILLIAM EPTON, MICHAEL :
CHERNOVICK, TRI-LINE OFFSET CO. INC.,
PROGRESSIVE LABOR MOVEMENT AND :
HARLEM DEFENSE COUNCIL, RAY WILLIAMS,
NATIONAL ASSOCIATION FOR THE ADVANCEMENT :
OF COLORED PEOPLE, a/k/1 "NAACP"

:

Defendants.

- x

MEMORANDUM OF DEFENDANT NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE IN SUPPORT OF THE MOTION TO DISMISS THE COMPLAINT

Robert L. Carter
Maria L. Marcus
Barbara A. Morris
Lewis Steel
Joan Franklin

20 West 40th Street
New York, N.Y.

Attorneys for Defendant
National Association for the
Advancement of Colored People

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- x

SHELDON LIEBOWITZ

Plaintiff,

- against -

JAMES FARMER, HERBERT CALLENDER,
MAJOR OWENS, CONGRESS OF RACIAL
EQUALITY, a/k/a "CORE", JESSIE
GRAY, WILLIAM EPTON, MICHAEL
CRENOVICK, TRI-LINE OFFSET CO. INC.,
PROGRESSIVE LABOR MOVEMENT AND
HARLEM DEFENSE COUNCIL, RAY WILLIAMS,
NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, a/k/a "NAACP"

Index No. 17506/65

Defendants.

- x

STATEMENT

The complaint in this cause was served on the National Association for the Advancement of Colored People (hereinafter referred to as the N.A.A.C.P.) on November 17, 1965. One Ray Williams is named as a defendant in paragraph 12 and designated as an officer of the N.A.A.C.P., which is named as a defendant in paragraph 13. In all a total of 13 individuals and groups are made defendants in this cause.

The complaint alleges a conspiracy and malicious and willful participation in a plan and course of action by all thirteen defendants to defame the plaintiff, a police officer, (Complaint, para. 16) and the consummation of that conspiracy by eight of the defendants, Harlem Defense Council, Farmer, CORE, Gray, Epton, Crenovick, Tri-Line Offset Co., Inc. and Progressive Labor Movement, by the preparation and publication of the article described in paragraph 17 of the Complaint and attached thereto as Exhibit A (Complaint, para. 17). Neither the N.A.A.C.P. or Williams is alleged to have aided in the preparation or publication of the article. Succeeding paragraphs of the Complaint allege the motive and intent with which defendants acted in purportedly initiating and effectuating a design to defame plaintiff (Complaint, para. 15-20) and assert damages of $2,500,000 as a result (Complaint para. 21).

On December 7, 1965, this defendant served on plaintiff a Notice of Motion to Dismiss the Complaint, together with an affidavit of John A. Morsell, pursuant to Rule 3211 (a) (7) of C.P.L.R. for its failure to state a cause of action. Hearing on the Notice of Motion was originally scheduled for December 20, 1965, but has been adjourned to January 3, 1966. This memorandum is in support of the motion.

ARGUMENT

I.

A. The N.A.A.C.P. has been made a defendant in this action solely on the basis of plaintiff's allegation that the defendant, Ray Williams, was its officer on or about July, 1965, when the alleged libel is supposed to have occurred. Pursuant to Rule 3211, C.P.L.R., it is submitted through the affidavit of John A. Morsell, the Assistant Executive Director of the N.A.A.C.P., that Ray Williams was not on or about the time in question and is not now an officer of this defendant. (Notice of Motion, Affidavit attached thereto). Accordingly, the complaint alleges no cause of action against this defendant and must be dismissed.

B. Even had plaintiff correctly designated Ray Williams as an officer of this defendant, there are substantial and controlling independent reasons why this complaint must be dismissed. The bare averment that a corporate officer or employee has libeled plaintiff is not in itself sufficient to bind the corporate employer; it must be alleged that the individual defendant was employed or authorized to commit the purported libel or, at a minimum, the form and circumstances of the libel as pleaded must reflect corporate authorization or ratification. Klemann v. McDermott Dairy Co., 132 App. Div. 166, 116 N.Y.S. 814 (1st Dept. 1909). Cf. Starr v. United Artists Corp., 20 Misc. 2d 636, affirmed 200 N.Y.S. 2d 356 10 A.D. 2d 634, (1st Dept. 1960).

C. Moreover, on the further assumption that Roy Wilkins was not only a corporate officer at the time in issue but that the acts by which plaintiff feels aggrieved were alleged to have been performed within the scope of his employment or to have received corporate ratification, the complaint would be legally insufficient for failure to plead in non-conclusory terms either this defendant's or Wilkins' connection with the preparation or publication of the asserted libel.

An examination of paragraphs 16-20 of the complaint, which delineate plaintiff's grievances, reveal but one paragraph (number 17) citing some ultimate facts to support the general claim of libel and neither Wilkins nor the NAACP are even mentioned therein. Paragraph 17 sets forth the purportedly libelous article and alleges its publication on or about July 1965 by the Harlem Defense Council and further asserts that defendants Farmer, CORE, Gray, Epton, Crenovich, Tri-Line Offset Co., Inc., and Progressive Labor

Movement participated in its preparation and publication (Complaint, para. 17 and Ex. 1). Contrary to Rule 3013, C.P.L.R. which requires allegations to be sufficiently particular in order that the court and parties will have notice of the occurrences or transactions intended to be proved and the material elements of each cause of action, Neither paragraph 17 or any other allegation of the Complaint apprises any defendant, excepting Marine Defense Council, of even the factual basis upon which plaintiff advances his claim against it.

Apparently plaintiff seeks to implicate this defendant, as evidenced by paragraphs 15, 18, 19 and 20, by asserting in broad and general terms its participation in a conspiracy or plan and course of action to defame him, the factual basis of which is nowhere evident, and by labeling this undefined "conduct" willful, malicious and wrongful. It is a well established principle of pleading that the bare allegations of wrongdoing is insufficient to state a cause of action; there must be supportive facts. Sanders v. [illegible], 281 A.D. 180 (1959); Kalmanash v. Smith, 291 N.Y. 142 (1943); Knowles v. City of New York, 176 N.Y. 430 (1903); Simon v. Glen Oaks Village, 206 Misc. 137, 132 N.Y.S. 2d 83 (S. Ct. Queens Co. 1954), aff'd 285 App. Div. 839, 136 N.Y.S. 2d 539 (2d Dept. 1955), aff'd 309 N.Y. 987 (1956). [illegible] v. Burlington Industries, Inc., 19 A.D. 2d 877, 244 N.Y.S. 2d 219 (1st Dept. 1963). In Kalmanash v. Smith, supra, at page 142 the court stated this rule with an explicitness that cannot be misunderstood:

> "General allegations of misconduct will not do in the absence of statements of those facts upon which are based the pleader's conclusions that the acts of which complaint is made are wrongful, lacking in good faith or unlawful, as the case may be. A pleading which fairly construed fails

> allege any facts which constitute a wrong but only general conclusions, is entirely insufficient and may be dismissed on that ground."

Furthermore, the mere allegation of conspiracy to commit a tort, even were it well pleaded, is insufficient to establish a cause of action. Green v. Davies, 182 N.Y. 499, 503 (1905) (conspiracy to defame); [illegible] v. Wyman, 67 Hun. 337, 338 (1st Dept. 1893); Hutchins v. Hutchins, 7 Hill 104, 108 (S. Ct. 1845) conspiracy to prevent plaintiff from inheriting under a will); Goldstein v. Siegel, 19 A.D. 2d 489, 244 N.Y.S. 2d 378 (1st Dept. 1963) (conspiracy to cause plaintiff to be prosecuted). Hence, the effort to relate this defendant to the tort complained of, solely through characterizing unspecified conduct as conspiratorial or wrongful is totally ineffective. Goldstein v. Siegel, supra.

D. Assuming arguendo that the allegations attempting to relate the NAACP to the article in controversy were non-conclusory and legally sufficient, the complaint would be fatally deficient for failure to aver to whom the purported libel was communicated. There can be no libel without publication and there is no publication absent the condition that the libel has been read by someone other than its perpetrators and the persons libeled. [illegible] v. Ketcham, 273 N.Y. 129 (1938); [illegible] v. Fawcett Publications, 20 A.D. 2d 338, 247 N.Y.S. 2d 317 (1st Dept. 1964); [illegible] v. Field 20 A.D. 2d 60, 244 N.Y.S. 792 (1st Dept. 1963) aff'd 14 N.Y. 2d 624; Candiloro v. [illegible], 134 N.Y.S. 82 (S. Ct. N.Y. Co. 1954); Fulton v. Ingalls, 165 App. Div. 383, 151 N.Y.S. 324 (2d Dept. 1914), aff'd 214 N.Y. 665.

In effect, this defendant has been served with a complaint which sets forth a purportedly libelous article allegedly prepared and published on and about July 1965 by other named defendants, but which lacks allegations of ultimate facts supporting publication and any tortious involvement of the NAACP. The only definite statement that can be said about this complaint in its applicability to this defendant is that it is "plentifully besprinkled with allegations that defendant did certain things wrongfully and maliciously, but these amount to nothing more than pleaders conclusions from unalleged fact." Jennings v. Burlington Industries, Inc. 19 A.D. 2d, 221, 224 N.Y.S. 2d 219.

CONCLUSION

For all of the reasons given above, defendant moves that this complaint be dismissed.

Respectfully submitted,

Robert L. Carter
Maria L. Marcus
Barbara A. Morris
Lewis M. Steel
Joan Franklin
20 West 40 Street
New York, New York 10018

Attorneys for Defendant
National Association for the
Advancement of Colored People

		FIRM LETTERHEAD ☐	1 CHASE LETTERHEAD ☐	OFFICE NUMBER	
PINK COPY FORM No. 7	ORIGINAL SIGNED WITH SIGNATURE OF	ORIGINAL SIGNED C.S. & M. BY	THIS COPY CONFORMED TO ORIGINAL BY	SECY. OR STENO	MAIL DEPT.

December 15, 1965

Liebowitz v. Farmer

Dear John:

Confirming our telephone conversation of December 2, I enclose herewith my notice of appearance on behalf of defendants Farmer, Callender, Owens and CORE as well as an original and two copies of a stipulation extending said defendants' time to answer until 10 days following written demand therefor. Please execute and return to me the original and one copy, retaining the other copy for your files.

As we agreed, inasmuch as this case so closely parallels the Gilligan v. King case which is also based on a poster and which your office is handling, the further prosecution of this matter as against the aforementioned defendants will await the ultimate disposition of the pending motions for summary judgment by Epton and Farmer.

Sincerely yours,

Denison Ray

John Lang, Esq.,
Messrs. Saxe, Bacon & Bolan,
598 Madison Avenue,
New York, N. Y. 10022

Encls.

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[1965, December 20]

NOTE:

I did not enclose the complaint because if I remember correctly, I have already sent you a copy. I need this one for my files, but in the event that you do need it, please let me know and I will forward.

Charlaine Shelto
(secretary to Carl Rachlin)

CARL RACHLIN
ATTORNEY AT LAW

165 WEST 46TH STREET, NEW YORK, N. Y. 10036
212 LT 1-8700

December 20, 1965

Denison Ray, Esq.
Cravath, Swaine & Moore, Esqs.
1 Chase Manhattan Plaza
New York, New York

RE: Liebowitz v. Farmer, et. al

Dear Denny:

Enclosed is a copy of the complaint in the above nuisance. The complaint was scotch-taped to Farmer's door last Saturday, the 11th.

May I thank you for the 46th time for all you have done.

Cordially,

Carl

CARL RACHLIN

CR/cs

March 21, 1966

Gilligan v. Farmer
Gilligan v. King
Liebowitz v. Farmer

Dear Carl:

I have taken the position as Chief Counsel in Jackson, Mississippi of the Lawyer's Committee for Civil Rights Under Law. I'll be leaving here April 29. Therefore, it will of course be necessary for you to find substitute counsel for the three above-entitled cases. When you let me know who it is to be, I'll send him the files, prepare the proper forms for substitution and get in touch with him personally.

As for the status of the cases, Saxe, Bacon & Bolan has not seemed anxious to prosecute them. I have only now served answers in the Gilligan cases, answers in which I raised, hopefully, every conceivable defense plus one or two that are rather "far out" but at least worth making noises about. No discovery has been taken by either side.

You will recall that I moved to dismiss both Gilligan complaints under the CPLR provision which enabled me to submit affidavits and have the motions treated as one for summary judgment. In the slander case my grounds were primarily constitutional under New York Times v. Sullivan whereas in the poster case the motion was based strictly on Farmer's nonparticipation in the publication of the libel, leaving the raising of the constitutional and other arguments to another time.

Shirley Fingerhood, representing Epton in the poster case, also moved to dismiss on affidavits, relying on Sullivan. Justice Helman denied the motion but applied Sullivan, finding that Gilligan was a public official but that there remained an issue of actual malice because of the nature of the poster. As soon as that decision came down, Justice Brust denied both of my motions, using the slovenly and incorrect approach of merely citing to Helman's decision in each case. Helman's decision was, however, not analogous because: (1) in the slander case, there is no issue of actual malice raised by the nature of the statements themselves and (2) in the poster case the constitutional issues were not even the ones before the court.

I filed and served a notice of appeal in each case and proceeded to have the records on appeal printed in page proof, which I then sent to Saxe, Bacon & Bolan for their corrections before final printing. That was three weeks ago and I've heard nothing.

As far as Liebowitz is concerned, some time ago I obtained an extension of my time to move or answer until within 10 days after written demand therefor, on the premise that the ultimate determinations of the motions in the other two cases would establish the precedent for disposition of this case. Thus, rather than going through the motions all over again, Saxe, Bacon & Bolan agreed simply to wait.

The expense for the printing of the records on appeals has not yet, of course, been completely incurred. But I have had some out-of-pocket expenses. I am itemizing them below and if you could expedite reimbursement so that I could receive payment by March 31, it would be greatly appreciated:

Duplicating	$43.43
Filing fees	10.00
Fee for certified copy of opinion from W.D. Ky.	6.00
Postage	5.61
Transportation	4.75
Entertaining Miss Fingerhood at lunch	4.45
	$74.24

I send my best.

Sincerely yours,

Denison Ray

Carl Rachlin, Esq.,
General Counsel,
CORE,
38 Park Row,
New York, N. Y.

QQ

1 CHASE MANHATTAN PLAZA
NEW YORK, N. Y. 10005

April 29, 1966

Gilligan v. Farmer
Gilligan v. King
Liebowitz v. Farmer

Dear Carl:

Confirming our telephone conversation of today, I am forwarding to you herewith by hand the complete file in each of the above-entitled matters. Also enclosed is a copy of my letter of this date to Saxe, Bacon & Bolan, advising them that I am leaving. When you have obtained another attorney to take over these matters, please send me the appropriate Consent to Substitution and I will execute it.

My address in Jackson is: Lawyers' Committee for Civil Rights under Law, 233 North Farish Street, Jackson, Mississippi 39201.

I look forward to seeing you in Jackson soon.

Sincerely yours,

Denny

Denison Ray

Carl Rachlin, Esq., General Counsel,
CORE,
38 Park Row,
New York, N. Y.

Encls.

ll

BY HAND

April 29, 1966

Gilligan v. Farmer
Gilligan v. King
Liebowitz v. Farmer

Dear Sirs:

As of today, I am leaving the State of New York and am moving down to Jackson, Mississippi where I will become the Chief Counsel of the Lawyers' Committee for Civil Rights under Law. Therefore, I will no longer be handling any of the above-entitled actions.

I have turned over my files in each of those cases to Carl Rachlin, General Counsel of CORE and the lawyer who referred the cases to me in the first instance. He is going to obtain the services of another attorney and at that time will send me a Consent to Substitution which I will be happy to execute. Meanwhile, should you have any questions, please direct them to Mr. Rachlin.

Sincerely yours,

Denison Ray

Messrs. Saxe, Bacon & Bolan,
598 Madison Avenue,
New York, N. Y.

ll

546 GEOFRE

LIVINGSTON, DAVID, etc. VS. CATHERWOOD, MARTIN, P., etc. NEW YORK 1965
(NEW YORK STATE MINIMUM WAGE)

State Historical Society of Wisconsin

Please Retain Original Order

Box 38
Folder 20

---X

In the Matter
Of

The Application of DAVID LIVINGSTON, etc.

Petitioner,

For a Judgment Under Article 78 etc.

- against -

MARTIN P. CATHERWOOD, etc.

Respondent.

---X

Index No.

AFFIDAVIT IN
SUPPORT OF
ORDER TO SHOW
CAUSE

STATE OF NEW YORK
COUNTY OF NEW YORK } :ss.

EUGENE G. EISNER, being duly sworn, deposes and says:

I am the Attorney for the Petitioner in the above entitled action and I am fully familiar with all the facts and circumstances heretofore had herein.

The Petitioner is seeking to compel the Industrial Commissioner of the State of New York to convene a Wage Board to inquire into, and recommend, minimum wages for workers employed in the retail trade industry.

As the Petition indicates, the Industrial Commissioner already has in his possession sufficient information to convene such a Board.

As the Petition further points out, the Industrial Commissioner has refused and failed to carry out this duty imposed upon him by statute.

By virtue of the Industrial Commissioner's dereliction of duty, literally hundreds of thousands of workers are not earning enough money to provide adequate maintenance and health facilities for their families. Every day that such workers receive such wages, "the health and well-being of the people of this State and the overall economy, are being threatened."

No previous application for the relief herein prayed for has been made.

An order to show cause is sought, rather than proceeding by notice of motion because the health and well-being of the people of this State are being threatened each day that workers receive less than an adequate minimum wage.

WHEREFORE, your deponent prays that the Petition be granted in all respects.

Sworn to before me
this 9th day of February, 1965

(s) ______________________
EUGENE G. EISNER

STATE OF NEW YORK)
COUNTY OF NEW YORK) :ss.

DAVID LIVINGSTON, being duly sworn, deposes and says:

that he is the Petitioner herein; that he has read the foregoing Petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

Sworn to before me
this 9th day of February, 1965

(s) ______________________
DAVID LIVINGSTON

Call Eisner

At a Special Term, Part II of
the Supreme Court of the State of
New York, held in and for the
County of New York, at the Courthouse,
Foley Square, Borough of
Manhattan, City and County of
New York, on the 9th day of
February, 1965

PRESENT:

Hon. Matthew M. Levy

Justice.

---X

In the Matter
Of
The Application of DAVID LIVINGSTON, as
President of District 65, Retail, Wholesale and
Department Store Union, AFL-CIO.

Index No.

Petitioner,

For a Judgment Under Article 78 of the Civil
Practice Law and Rules, Compelling and
Directing the Industrial Commissioner of the
State of New York to Appoint Immediately a Wage
Board for Employees in the Retail Trade Industry,

ORDER TO SHOW CAUSE

- against -

MARTIN P. CATHERWOOD, Industrial
Commissioner of the State of New York,

Respondent.

---X

Upon the Petition of David Livingston, verified on the 9th day of February, 1965, and upon the Affidavit of Eugene G. Eisner sworn to on the 9th day of February, 1965, and upon the Exhibits in support thereof,

LET the Respondent Martin P. Catherwood, Industrial Commissioner of the State of New York, show cause in Special Term, Part I of this Court to be held at the Courthouse thereof located at Foley Square, County and State of New York on the 17th day of February, 1965, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

WHY an order should not be made and entered herein compelling and directing the Industrial Commissioner of the State of New York to appoint, immediately, a Wage Board to inquire into, and report, and recommend adequate minimum wages and regulations for employees in the retail trade industry, and why the Petitioner should not have such other and further relief as may be just, proper and equitable.

Good and sufficient reason appearing therefor, let service of a copy of this order, together with the papers upon which it was granted, upon the Respondent on or before the 10th day of February, 1965, be deemed sufficient service.

M.M.L.

ENTER

M.M.L.
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
---X

In the Matter
Of
The Application of DAVID LIVINGSTON, as
President of District 65, Retail, Wholesale and
Department Store Union, AFL-CIO,

Petitioner,

PETITION

For a Judgment Under Article 78 of the Civil
Practice Law and Rules, Compelling and
Directing the Industrial Commissioner of the
State of New York to Appoint Immediately a Wage
Board for Employees in the Retail Trade Industry,

- against -

MARTIN P. CATHERWOOD, Industrial
Commissioner of the State of New York,

Respondent.
---X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The Petition of David Livingston, by his Attorney, Eugene G. Eisner, respectfully shows to the Court:

1. Your Petitioner is President of District 65, Retail, Wholesale and Department Store Union, AFL-CIO., located at 13 Astor Place, NYC.

2. Said Union represents thousands of workers who are employed in the retail trade industry within the City and State of New York.

3. The Industrial Commissioner, hereinafter called as such, is the head of the Department of Labor of the State of New York, and as such, is the person, referred to in Section 653 of the Labor Law, (hereinafter referred to as Section 653), who determines whether the minimum wages paid to persons employed in any occupation or occupations are sufficient to provide adequate maintenance and to protect the health of the persons employed in such occupation or occupations.

4. Your Petitioner institutes this proceeding to compel the Commissioner to appoint a Wage Board, pursuant to Section 653, to

inquire into, and report, and recommend adequate minimum wages and regulations for employees in the retail trade industry.

5. The Industrial Commissioner is obligated to appoint such Wage Board by virtue of the fact that he is in possession of certain information, as defined in Section 653. Such information necessitates a full scale inquiry as to the adequacy of the minimum wages paid in these industries for the reasons described below.

6. The above information is contained in a New York State Department of Labor departmental memorandum, dated April 20th, 1964, wherein it states, inter alia, that more than 177,000 workers in New York State are employed in the retail industry; that they receive less than $1.50 per hour, and as such, work in a "low wage industry".

7. The payment of such minimum wages in these industries, violates the stated public policy of the State of New York, to wit:

> "Employment of persons at these insufficient rates of pay threatens the health and well-being of the people of this State, and injures the overall economy." (Section 650 Labor Law)

8. By letter dated January 30th, 1965, your Petitioner caused a letter to be sent to the Industrial Commissioner enclosing a Petition signed by fifty residents of the State of New York, employed in the retail industry within the State of New York, calling upon the Commissioner to appoint a Wage Board as hereinbefore described. A copy of such letter and Petition are attached hereto, and marked respectively, Exhibit A and Exhibit B.

9. To date, the Industrial Commissioner has refused and failed to perform his duty as imposed by statute.

10. No previous application has been made for the relief sought herein.

WHEREFORE, your Petitioner prays that a final judgment be made and entered herein compelling and directing the Industrial Commissioner of the State of New York to appoint, immediately, a

Wage Board to inquire into, and report, and recommend adequate minimum wages and regulations for employees in the retail trade industry, and for such other and further relief as the Court may deem just and proper in the premises.

Respectfully submitted,

Dated: New York, N.Y.
February 9th, 1965

(s) ______________________
David Livingston, as President of
District 65, RWDSU, AFL-CIO.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of

The Application of DAVID LIVINGSTON, as President of District 65, Retail, Wholesale and Department Store Union, AFL-CIO.,

Petitioner,

and

CONGRESS OF RACIAL EQUALITY, NATIONAL FEDERATION OF PUERTO RICAN FATHERS & MOTHERS, INC.,

Intervening Petitioners,

For a Judgment Under Article 78 of the Civil Practice Law and Rules, Compelling and Directing the Industrial Commissioner of the State of New York to Appoint Immediately a Wage Board for Employees in the Retail Trade Industry,

- against -

MARTIN P. CATHERWOOD, Industrial Commissioner of the State of New York,

Respondent.

NOTICE OF APPEAL

Index No. 1942/1965

S I R S:

PLEASE TAKE NOTICE that the Petitioner herein, DAVID LIVINGSTON, as President of District 65, Retail, Wholesale and Department Store Union, AFL-CIO, hereby appeals to the Appellate Division of the Supreme Court, First Department, from an order of the Court dated March 23rd, 1965, and entered in the office of the Clerk of the County of New York on the twenty-fifth day of March 1965, granting the motion of MARTIN P. CATHERWOOD, Industrial Commissioner of the State of New York, the Respondent herein, dismissing said Petitioner's Article 78 proceeding, which seeks an order compelling the Respondent o appoint a Wage Board pursuant to statute, and Petitioner appeals from each and every part of said order.

Dated: New York, New York
April 5th, 1965

Yours, etc.,

EUGENE G. EISNER
Attorney for Petitioner
Office & P.O. Address
13 Astor Place
New York 10003, N.Y.

TO: CLERK OF THE COUNTY OF NEW YORK
60 Centre Street
New York, N.Y.

LOUIS J. LEFKOWITZ, ESQ.
Attorney for Respondent
80 Centre Street
New York, N.Y.

GEORGE SCHIFFER, ESQ.
Attorney for Congress of Racial Equality
Intervening Petitioner
40 E. 49th Street
New York 17, N.Y.

IRMA VIDAL SANTAELLA
Attorney for National Federation of Puerto Rican
Fathers & Mothers, Inc.
Intervening Petitioner
994 Southern Boulevard
Bronx, N.Y.

NEWS

from

district 65

RWDSU/AFL-CIO

new file

FOR IMMEDIATE RELEASE
February 10, 1965

A large AFL-CIO local union has begun a judicial proceeding whose target is the raising of the legal minimum wages of some 177,000 New York State retail trades workers presently receiving less than $1.50 per hour.

In response to a petition submitted by David Livingston, president of the 35,000 member District 65 of the Retail, Wholesale and Department Store Union, Supreme Court Justice Matthew M. Levy directed New York State Industrial Commissioner Martin P. Catherwood to show cause no later than February 17 why

> "an order should not be made and entered herein compelling and directing the Industrial Commissioner of the State of New York to appoint immediately a wage board to inquire into, and report, and recommend adequate minimum wages and regulations for the employees in the retail industry."

more

Mr. Livingston said his judicial action was intended to compel Mr. Catherwood to execute forthwith legislatively mandated administrative procedures designed to raise the present statutory minimum of $1.25 per hour in the retail trades industry.

The union's petition relied on Mr. Livingston's interpretation of section 653 of article 19 of the New York State Labor Law, part of which reads:

> "If, on the basis of information in his possession...., the [industrial] commissioner is of the opinion that any substantial number of persons employed in the retail trades are receiving wages insufficient to provide adequate maintenance and to protect health, he shall appoint a wage board to....recommend adequate minimum wages......"

Mr. Livingston charged that Mr. Catherwood already had at his disposal the information which required him to convene a wage board. The union leader cited a study made by the New York State Department of Labor last October which "roughly estimated" that some 177,000 retail trades workers were receiving less than $1.50 per hour.

Mr. Livingston said "that 177,000, 27 per cent of the total, was certainly a 'substantial number'. Equally certain, anything less than $2.00 per hour, not to speak of $1.50, is a wage 'insufficient to provide adequate maintenance'.

"It is impossible to avoid the suspicion," continued Mr. Livingston, "that a top level policy decision of the

more

Rockefeller Administration is prohibiting Mr. Catherwood from carrying out the law."

Mr. Livingston said that this was the first time since the original enactment of the New York State Minimum Wage Law in 1937, that a union had utilized the courts in an attempt to force affirmative action by the Industrial Commissioner in the area of minimum wage.

He emphasized that the present court action was only one of ~~our~~ the four prongs of what he termed "District 65's Private War Against Poverty".

"As our contribution to President Johnson's crusade against poverty, District 65 will organize and strike, lobby and litigate, "Mr. Livingston said.

Mr. Livingston said that his union planned in the next four months to enlist into District 65 between 10 and 15,000 presently unorganized workers, the bulk of whom were at or slightly above the legal minimum level of $1.25.

Mr. Livingston said that his present judicial action the first in a series, was not intended as a substitute for, but rather as a supplement to, the campaign being conducted by the New York State AFL-CIO to secure a blanket, state-wide increase in the legal minimum wage.

"We will exert every effort in support of New York State AFL-CIO President Raymond R. Corbett in that campaign," Mr. Livingston said.

He added, "legislative passage of at least a $1.50 state-wide minimum seems certain but executive approval seems doubtful, if we read the Governor's message correctly. Whatever statutory minimum emerges, it will not lessen by one iota our campaign to secure still higher pinpointed minimums in our industry thru the wage boards. So many workers are at or close to the legal minimum that to obtain a decent overall structure, the rate for our industry must be above the statutory minimum, whatever the figure may be."

Mr. Livingston explained that by May 15th of this year every District 65 contract will provide for a starting wage of at least $1.75 per hour.

"District 65," he said, "in addition to the duty of providing higher wages for its members, is taking action to protect the competitive position of the employer who, by virtue of his collective bargaining committments, is paying an entry wage fifty cents or more greater than the legal minimum, not to speak of the high cost of fringe benefits."

"In effect," he continued, "Commissioner Catherwood's continued flouting of the legislative mandate not only perpetuates poverty but adds to it by destroying union standards."

Mr. Livingston said that District 65's Private War Against Poverty will not require public funds but "we do expect that federal and local and especially state government will help and not hinder us."

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ARTICLE 19, SECTION 653, NEW YORK STATE LABOR LAW.

INVESTIGATION OF ADEQUACY OF WAGES

The commissioner shall have power on his own motion to cause an investigation to be made of the wages being paid to persons employed in any occupation or occupations to ascertain whether the minimum wages established in accordance with the provisions of this article are sufficient to provide adequate maintenance and to pretect the health of the persons employed in such occupation or occupations. The commissioner shall, on the petition of fifty or more residents of the state engaged in or affected by an occupation or occupations sought to be investigated, cause such an investigation of such occupation or occupations to be conducted. If, on the basis of information in his possession with or without such an investigation, the commssioner is of the opinion, that any substantial number of persons employed in any occupation or occupations are receiving wages insufficient to provide adequate maintenance and to protect their health, he shall appoint a wage board to inquire into and report and recommend adequate minimum wages and regulations for employees in such occupation or occupations.

DISTRICT 65 [illegible] A.F.L.-C.I.O.
13 Astor Place [illegible] ORegon 3-5120

Racklin

February 23rd, 1965

Mr. James Farmer
National Director
Congress of Racial Equality
38 Park Row
New York City

Dear Mr. Farmer:

I am forwarding to you herewith, a copy of a News Release which was presented to the Press on February 10th, 1965, and reported in the New York newspapers the following day. Said release contains an order, signed by a Justice of the Supreme Court of the State of New York, requiring the Industrial Commissioner of the State of New York to show cause why an Order should not be entered compelling and directing the Industrial Commissioner to appoint immediately, a Wage Board, pursuant to the Labor Law of the State of New York, to recommend adequate minimum wages for employees in the retail trade industry within the State of New York.

As you will see in the supporting Petition, also attached, the Industrial Commissioner already has sufficient information in his possession enabling him to convene such a Wage Board. According to a statistical survey compiled by his own department, the retail trade industry is a "low wage industry."

The naked truth surrounding this shameful situation, is the fact that the vast majority of the workers affected by these unconscionable low wages are Negroes and Puerto Ricans. There is no question, in our minds, that if these workers were white, this situation could never exist.

The Commissioner has already indicated to us, by letter, that he does not intend to convene, voluntarily, such a Wage Board, and will do so only if ordered by the Court. Obviously, the Commissioner is of the opinion that the wages being paid to these people are already adequate to maintain decent living and health standards, despite his findings that the retail industry is a low wage industry!

The Order was served on the Commissioner on February 10th, 1965. The original date to appear in Court was February 17th. At the Commissioner's request, the hearing has been adjourned to March 5th.

DISTRICT 65

C.I.O.

Mr. James Farmer

I feel, and am sure, you will agree with me, that the raising of the minimum wages of persons in this industry and other industries as well, vitally concerns all of us. I therefore, invite you to participate in these proceedings, as permitted by law.

Since you are affected, and have a vital interest in the outcome of these proceedings, I invite you to intervene legally as a party to the proceedings. This can only be done by Motion to the Court.

Our Counsel, Eugene G. Eisner, who works out of our Offices at 13 Astor Place, New York, N.Y., Telephone No. OR 3-5120, and who is handling this proceeding before the Court, will make himself available to you or your Counsel, should you desire to intervene, as requested.

President Livingston and myself will likewise make ourselves available for any consultation with respect thereto.

Respectfully yours,

Cleveland Robinson
Secretary-Treasurer

CR/gc
encls.

MEMORANDUM

new file
Livingston Catherwood

Feb. 24, 1965

TO: George Wiley

FROM: Carl Rachlin

RE: District 65, AFL-CIO

The letter to George Schiffer, of which you have a copy, explains itself. There is one thing I have not referred to. I promised to pass on to you:

(A) that we ought to have a press conference announcing our entry into this case, and

(B) District 65 would very much like to have people available for demonstrations, etc.

I suggested--and this was accepted--that we approach this possible from a socio-economic position, as the letter says Kisberg will prepare such a memorandum. It will be up to us to supply the supporters of the demonstration. By the way, they have asked Whitney Young, John Morcell and Jack Greenberg to join also. In fact I am told Greenberg wants me to discuss it with him. I have not yet done so and I am inclined to avoid it if it is possible.

CR:jp

New File

February 24, 1965

George Schiffer, Esq.
40 East 49th St.
New York, N.Y.

Dear George:

George Wiley met with various leaders of Dictrict 65 and is terribly anxious that we join as Co-party petitioners in the proceeding presently entitled Livingston, etc. against Catherwood. This is a proceeding under Article 78 to demand that Catherwood exercise his authority under Section 653 of the New York State Labor Law in order to raise the minimum wage of retail workers in New York. Our interest would be: (A) that we have members and their families who would be affected by such a change, and, (B) that the Negro community with whom we work very closely and whom we represent needs this change in order to improve bad economic conditions.

I arranged a meeting with Gene Eisner today at District 65 and called your office, but was told you were in Detroit and would return tomorrow. The proceeding is presently pending in Special Term Part I on Friday, March 5. The motion should be returnable at that time for leave to appear as Co-petitioner. We can say in the papers that the Co-petitioner represents many people who are in the retail trade industry particularly in the Harlem area. For the record we should have an exchange of letters, on the one hand asking and on the other their consenting to this procedure. Livingston, Eisner and I discussed this today and there will be, of course, no problem.

In addition Nick Kisberg has agreed to prepare a socio-economic memorandum for the court in support of the need for the relief sought. Gene Eisner is willing to assist you in any way he and District 65 can.

Kindest regards,

Carl Rachlin
General Counsel

CR:jp

P.S. The white pages of the press release contain a duplicate of the petition and supporting papers.

cc: Dr. George Wiley
Eugene Eisner, Esq.

MSS SEDFRE
546

LOUISIANA VS. BARKSDALE, BRUCE 1964
(RAPE)

Box
Folder

State Historical Society Of Wisconsin

Please Retain Original Order

Rec'd early Oct. 64

SUPREME COURT OF LOUISIANA

NO. 47,227

STATE OF LOUISIANA

Appellee

versus

BRUCE BARKSDALE

Appellant

* *

Appeal from the Criminal District Court for the
Parish of Orleans, State of Louisiana, Section "E";
Hon. J. Bernard Cocke, Judge Presiding.

* *

ORIGINAL BRIEF
IN BEHALF OF DEFENDANT AND APPELLANT

* * * * * * * * * * *

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA
ATTORNEYS FOR APPELLANT

Compliments of Collins,
Douglas & Elie

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SUPREME COURT OF LOUISIANA

NO. 47, 227

STATE OF LOUISIANA

Appellee

versus

BRUCE BARKSDALE

Appellant

* *

Appeal from the Criminal District Court for
the Parish of Orleans, State of Louisiana,
Section "E"; Hon. J. Bernard Cocke, Judge
Presiding.

* *

ORIGINAL BRIEF
IN BEHALF OF DEFENDANT AND APPELLANT

* * * * * * * * * * *

STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction of this matter by virtue of Article VII, Section 10, paragraph seven, of the Louisiana Constitution, wherein it is provided:

> "The Appellate jurisdiction of the Supreme Court shall also extend to criminal cases on questions of law alone, wherever the penalty of death, or imprisonment at hard labor, may be imposed; or where a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed."

The Criminal District Court for the Parish of Orleans in matter Number 177-037 sentenced appellant herein to death on March 16, 1964.

PRINCIPLES OF LAW

One charged in a short form indictment with aggravated rape has a right to a bill of particulars outlining the nature and the cause of the accusation.

State v. Howard, 243 La. 971, 149 So.2d 409 (1963)
State v. Barnes, 242 La. 102, 134 So.2d 890 (1961)
State v. Coleman, 236 La. 625, 108 So.2d 534 (1959)
State v. Holmes, 223 La. 397, 64 So.2d 890 (1953)
State v. Leming, 217 La. 257, 46 So.2d 262 (1950)

Short form indictments without more violate the state and federally protected rights of persons accused of crime to be informed of the nature and cause of the accusation against them.

Article 1, Section 10, Louisiana Constitution 1921.
Sixth and Fourteenth Amendments to the United States Constitution.

Systematic exclusion of Negroes from grand juries violate the equal protection clause of the Fourteenth Amendment.

Strauder v. W. Virginia, 100 U.S. 303 (1879).

Systematic exclusion of Negroes from petit juries violate the equal protection and due process clauses of the Fourteenth Amendment.

U. S. v. Goldsby, 263 F.2d 71 (1959)
U.S. v. Wiman, 304 F.2d 53 (1962)

"Discrimination may be proved in other ways than by evidence of long continued unexplained absence of Negroes from many panels...."

Cassell v. Texas, 339 U.S. 282 (1950)

"If one factor is uniform in a continuing series of events that are brought to pass through human intervention, the law would have to have the blindness of indifference rather than the blindness of impartiality not to attribute the uniform factor to man's purpose. The purpose may not be of evil intent or in conscious disregard of what is conceived to be a binding duty. Prohibited conduct may result from a misconception of what duty requires...."

Cassell v. Texas, 339 U.S. 282 (1950) Concurring opinion.

"...Even if the white and yellow tickets were drawn from the jury box without discrimination, opportunity was available to resort to it at other stages in the selection process. And in view of the case before us, where not a single Negro was selected to serve on a panel of sixty though many were available -- we think that petitioner has certainly established a prima facie case of discrimination."

Avery v. Georgia, 345 U.S. 559 (1953).

Any question as to the race of a prospective general jury venireman on the subpoenas sent to same are unconstitutional and fatally infects the administration of the jury system.

STATEMENT OF FACTS

Bruce Barksdale, a Negro, the appellant herein, is charged with having committed aggravated rape on October 3, 1962 upon one Judith, Chambers, a white female, in her second floor apartment in the French Quarters in New Orleans, Louisiana.

The weapon allegedly used to threaten the victim was a short iron claw hammer generally used to open crates of fruit and vegetables. The hammer was not physically used on the alleged victim, it was, according to the victim's testimony, used to threaten her.

On October 18, 1962 the Orleans Parish Grand Jury returned a true bill and the case was allotted to Section E, the Honorable Judge J. Bernard Cocke who appointed Robert F. Collins, Nils R. Douglas and Lolis E. Elie to represent Bruce Barksdale.

The appellant was tried by an all white jury that deliberated less than half-hour and returned a verdict of guilty as charged.

SPECIFICATIONS OF ERROR

(1.) The trial court committed prejudicial error by sustaining the State's position with reference to its answers to the application for a bill of particulars. (Bill Number One)

(2.) The trial court committed prejudicial error in denying both Motions to Quash. (Bill Number Three)

(3.) The trial court committed prejudicial error when it denied defendant's Motion Challenging the Jury Commission etc. (Bill Number Four)

(4.) The trial court committed prejudicial error when it refused to permit defendant to further examine the Chairman of the Jury Commission on the function of the question as to race on the subpoena sent to prospective general jury venireman. (Bill Number Six)

(5.) The trial court committed prejudicial error by denying defendant's Motion Challenging the Petit Jury. (Bill Number Ten)

(6.) The trial court committed prejudicial error when it denied defendant the right to pursue its questioning of Judges Schulingkamp and Haggerty on the question of how they concluded Negroes were less qualified than whites to serve on juries (Bills Numbered Eight and Nine)

(7.) The trial court committed prejudicial error when it denied the Motion for a New Trial and Motion in Arrest of Judgment.

BILL OF EXCEPTIONS NUMBERS 1 AND 3

Appellant was charged by a bill of indictment (Tr. 27) which charges that on October 3, 1962 in the Parish of Orleans he "committed aggravated rape of one Judith Chambers contrary to the form of Statute of the State of Louisiana in such cases made and provided and against the peace and dignity of the same."

This alleged violation of L.S.A.-R.S. 14:42 is couched in terms of a short form indictment specifically sanctioned by L.S.A.-R.S. 15:235 which provides in part:

"The following forms of indictments may be used in the cases in which they are applicable,...

Aggravated Rape - A.B. committed aggravated rape upon C.D.

Provided further that the district attorney, if requested by the accused prior to arraignment, may be required by the Judge to furnish a bill of particulars setting up more specifically the nature of the offense charged."

This court has often held that an accused indicted under a short form has a right to be furnished with a bill of particulars upon appropriate request.

See e.g.,

State v. Howard, 243 La. 971, 149 So.2d 409 (1963);
State v. Barnes, 242 La. 102, 134 So.2d 890 (1961);
State v. Coleman, 236 La. 625, 108 So.2d 534 (1959);
State v. Holmes, 223 La. 397, 65 So.2d 890 (1953);
State v. Leming, 217 La. 257, 46 So.2d 262 (1950);

In the instant case appellant filed an application for a bill of particulars, the State answering portions thereof and refusing to answer other portions, the trial court in its per curiam sustaining the State's position. The questions and answers (Tr. 86-87) were as follows:

(1) Q. Under which subsection of L.S.A.-R.S. 14:42 is defendant charged?

A. Subsections 1 and 2.

(2) Q. What is the weapon with which defendant is alleged to have committed the aggravated rape?

A. State is not required to answer.

(3) Q. Where was the alleged rape perpetrated?

A. 1023 Chartres Street, upstairs apartment.

(4) Q. What time of day was the alleged rape done?

A. Approximately 9:30 A.M.

(5) Q. How many times was the alleged victim ravished?

A. State is not required to answer.

(6) Q. What was the force or threat which was used in committing the alleged aggravated rape?

A. State is not required to answer.

(7) Q. Was the victim of the alleged rape merely threatened or was the weapon physically used against the alleged victim?

A. State is not required to answer.

(8) Q. If the weapon was physically used against the victim was she knocked unconscious?

A. State is not required to answer.

(9) Q. What injuries aside from the alleged rape did the victim sustain as a result of this aggravated assault?

A. State is not required to answer.

Bill of Exception No. 1 to the trial court's ruling was duly perfected. (Tr. 84).

Appellant also duly moved to quash the indictment on the grounds, inter alia, that it violated Article 1 Section 10 of the Constitution of the State of Louisiana, 1921 and the Sixth Amendment to the Constitution of the United States. (Tr. 66) Said motion being denied, appellant thereafter duly perfected Bill of Exception No. 3 challenging said ruling (Tr. 122).

Appellant submits respectfully that the foregoing facts establish:

1. That the trial court committed prejudicial error in failing to compel the State to answer certain of the question s contained in the application for a bill of particulars:
2. That the short form of indictment, without being supplemented by the answers to certain of the questions contained in the application for a bill of particulars, violates the applicable provisions of the Louisiana and U. S. Constitutions; and
3. That short form of indictment in any event is invalid under the applicable provisions of the Louisiana and U. S. Constitutions.

Appellant now proceeds to an analysis of the applicable authorities which, he respectfully submits, establishes beyond preadventure the efficacy of these arguments.

1. Prejudicial Error re Bill of Particulars

This Honorable Court has long and consistently held that an accused indicted under a short form is entitled to have the nature of the crime of which he stands accused set forth in a bill of particulars.

Thus, in State v. Holmes, 223 La. 397, 65 So.2d 890 (1953) defendant was indicted under a short form charging him with "simple burglary." He requested to be supplied with a bill of particulars stating, among other things, "whether or not the intent of the accused was to commit a forcible felony or theft, and if a forcible felony the nature of it." The decision of the trial court refusing to require the State to furnish this information was reversed by this Honorable Court. This Court, noting that its approval of the short forms of indictments" was given principally" because of the bill of particular proviso contained in L.S.A.-R.S. 15:235, went on to state:

> In view of the language and holding of those cases it must be said that our jurisprudence is to the effect that where a short form is used in a prosecution and it does not set forth sufficient facts to inform the accused of the nature and cause of the accusation so as to enable him to prepare his defense properly, or it fails to allege the essential elements of the crime sought to be charged, he is entitled to be furnished such information on timely requesting it by way of an application for a bill of particulars. In substance, this court so stated in State v. Bessar, 213 La. 299, 34 So.2d 785; State v. Masino, 214 La. 744, 38 So.2d 622, and State v. Leming, 217 La. 257, 46 So.2d 262.

> And a denial of these essential particulars by the judge constitutes an abuse of such discretion as is vested in him by L.S.A.-R.S. 15:235.

Appropriate here is a statement contained in Section 1640, Volume 3 of Wharton's Criminal Procedure, 10th Edition, reading:

> "It is said that the allowance of bills of particulars is within the discretion of the presiding judge, and is not subject of error. Yet whenever a bill of particulars is a substitute for special avernments in an indictment, error should be entertained. * * * The appellate court should have the power of determining whether there is enough filed against the defendant to put him on his trial."

Since the information sought by this defendant is of the essence of the offense charged he was and is entitled to have it. And, as further consequence, inapplicable are those cases relied on by the district attorney which hold that the State is not required in advance of the trial to disclose the evidence it will offer in proof of the crime.

Equally significant is this Court's decision in State v. Scott, 237 La. 71, 110 So. 2d 530 (1959), where it was held that defendant in an aggravated rape case had abandoned any challenge to the sufficiency of the State's answer to his motion for a bill of particulars by reason of the express waiver of his counsel. However, in highly significant language Justice McCaleb delineated the role that a bill of particulars plays in a short form aggravated rape case:

> R.S. 14:42 provides that the offense of aggravated rape is committed under any one or more of the following circumstances: (1) where the female's resistance is overcome by force; (2) where she is prevented from resisting by threats of great and immediate bodily harm accompanied by the apparent power of execution and (3) where she is under the age of 12 years. If the motion for the bill of particulars filed by appellant had specifically requested this information, there is no doubt that the judge would have been obliged to order the State to furnish it, in view of our decision in State v. Holmes, 223 La. 397, 65 So. 2d 890, where it was held that, in a prosecution under the short form for a crime which may be committed in several designated ways, the accused is entitled, upon his request, to be informed of the specific way or ways relied on by the State. But an examination of appellant's motion for particulars reveals that he was attempting to require the State to furnish him with the details of its evidence, to which he was not entitled. State v. Poe, 214 La. 606, 38 So.2d 359 and State v. Michel, 225 La. 1040, 74 So.2d 207.

And, while the motion is unquestionably of such broad import as to include information respecting the way in which the rape occurred, such information was neither specifically requested nor was any such demand ever directed to the attention of the trial judge.

Such information was supplied in State v. Michel, 225 La. 1040, 74 So.2d 207 (1954) in marked contrast to the refusal in the instant case, where the State in reply to a motion for a bill of particulars respecting a short form aggravated rape charge stated its prosecution was based on paragraphs (1) and (2) of L.S.A.-R.S. 14:42 "in that the victim had resisted the act to the utmost but that her resistance was overcome by force, and, particularly, in that she was prevented from resisting the act by threats of great bodily harm accompanied by the apparent power of execution." (p. 211)

See also State v. Chanet, 209 La. 410, 24 So.2d 670 (1946) (indicating aggravated rape defendant entitled to obtain "essential information by means of a bill of particulars.")

State v. Thomas, 240 La. 419, 123 So.2d 872 (1960) is clearly distinguishable. There, this Court held that the State was compelled to answer the question contained in defendant's bill of particulars, viz: "What particular type of aggravated rape does the State propose to establish in this case;" The State, after first stating it was not required to answer this question, went on to declare "the State elects to proceed on all parts of the Statute." This Court held such answer "did furnish the necessary information" i.e., did answer the limited question put to it by defendant. In other words, Thomas does not purport to limit (nor, we respectfully submit, could it constitutionally limit) defendant's rights in an aggravated rape case to a bill of particulars to a mere enumeration by the State of the subsections of 14:42 it is proceeding under. Such a holding, it is submitted would fly in the face of this Court's scholarly opinion in State v. Straughan, 229 La. 1036, 87 So.2d 523 (1956) (holding that portion of Article 235 of the State's Code of Criminal Procedure permitting indictments for certain crimes "by using the name and article number of the offense committed", violated Louisiana's constitutional requirement "that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him"); and numerous other opinions of this Court which hold that short form indictments are only saved from unconstitutionality by reason of the fact that a bill of particulars is available to fill in the interstices respecting" the nature and cause of the offense."

See, e.g.,

State v. Nichols, 216 La. 622, 44 So.2d 318 (1950);
State v. Chanet, 209 La. 410, 24 So.2d 670 (1946);
State v. Davis, 208 La. 954, 23 So.2d 801 (1945);

It may thus be concluded from the foregoing authorities that prejudicial error was committed by the trial court in failing to order the State to answer the questions put in appellant's motion for a bill of particulars, particularly questions 6, 7 and 8, for only through answers to such questions would defendant's constitutional rights under Article 1 Section 9 of the Louisiana Constitution to "be informed of the nature and cause of the accusation against him be afforded him. And, as held in State v. Holmes, supra, the Constitutional imperative overrides the evidentiary rule "that the State is not required in advance of trial to disclose the evidence it will offer in proof of the crime."

2. Short Form of Indictment in This Case Without Being Adequately Supplemented By Answers to Bill of Particulars Questions in This Case Violated Appellant's Constitutional Rights.

As indicated above, numerous decisions of this Honorable Court have held that short forms of indictments under Article 235 of the Louisiana Code of Criminal Procedure are saved from unconstitutionality under Article 1 Section 9 of the Louisiana Constitution solely by reason of the availability of the bill of particulars to fill in the necessary details lacking in the indictment. Since such details were requested, but not supplied, herein appellant's constitutional rights have been violated.

BILLS OF EXCEPTIONS NUMBERED FOUR AND TEN

Bill of exception number four was taken to the denial of the Motion to Set Aside the Jury Commission, General Jury Venire, Grand Jury Venire, Grand Jury and Petit Jury Venire. This motion alleged violations of rights guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. It further alleged a lack of an impartial administration of the jury system and the exclusion of all but a token number of Negroes. Hereinafter the term exclusion will denote exclusion and token inclusion of Negroes based solely on race.

Bill of exception number ten was taken to the denial of the Motion to Set Aside the Petit Jury. This motion is substantially the same as the one involved in bill of exception number four.

The theory of appellant's case as far as these two bills are concerned is that there is a lack of an impartial administration of the jury system in Orleans Parish. This is accomplished by exclusion of Negroes and the simultaneous inclusion of a token number of Negroes on the venires and on the grand and petit juries. Exclusion of Negroes f grand juries violates the equal protection of the laws clause of t fourteenth amendment. Strauder v. West Virginia, 100 U.S. 303, (1 Exclusion of Negroes from petit juries violates both the equal protection and due process clauses of the fourteenth amendment. U. S. Goldsby 263 F.2d 71 (1959); U. S.vWiman, 304 F.2d 53 (1962).

These bills present primarily a question of fact. The standard by which these facts are to be measured is: Has the defendant made o a prima facie case of exclusion. Neal v Delaware 103 U.S. 370 (18

There is authority, some binding and some persuasive, for the stat ment that there are at least five specific ways of proving exclusi of Negroes from juries, Cassell v. Texas 339 U.S. 282 (1950) says

> "Discrimination may be proved in other ways than by evidence of long continued unexplained absence of Negroes from many panels..."

The first method is that used by Samuel Leibowitz in the second Scottsboro Boys case, Norris v. Alabama 294 U.S. 587 (1934). This test in essence says that a long continued, unvarying, wholesale exclusion of Negroes establishes discrimination.

The second method is the majority opinion in Cassell v. Texas 339 U.S. 282. This opinion said in part:

> "...The statements of the jury commissioners test that they chose only whom they knew, and that they knew no eligible Negroes in an area where Negroes made up so large a proportion prove the intentional exclusion that is discrimination in violation of petitioner's constitutional rights."

The third method is that of Mr. Justice Frankfurter's concurring opinion in Cassell v Texas supra. It says in part:

> "If one factor is uniform in a continuing series of events that are brought to pass through human intervention, the law would have to have the blindness of indifference rather than the blindness of impartiality not to attribute the uniform factor to man's purpose. The purpose may not be of evil intent or in conscious disregard of what is conceived to be a binding duty. Prohibited conduct may result from misconception of what duty requires..."

The fourth method comes from Mr. Justice Clark's concurring opini in Cassell v. Texas supra. It says in part:

> "The elimination of this large group in the community from the commissioners consideration deprived petitioner of constitutional safeguards..."

The fifth method comes from the majority opinion in Avery v. Georgia 345 U.S. 559 (1953). Part of the decision says:

> "...Even if the white and yellow tickets were drawn from the jury box without discrimination, opportunity was available to resort to it at other stages in the selection process. And in view of the case before us, where not a single Negro was selected to serve on a panel of sixty though many were available -- we think that petitioner has certainly established a prima facie case of discrimination."

Appellant feel that he has made out a prima facie case under all of the above outlined methods.

Appellant herein used a modified version of the pattern of proof established by Norris v. Alabama, supra. In that case, proof that Negroes constituted a substantial segment of the population of the jurisdiction, that some Negroes were qualified to serve as jurors, and that none had been called for jury service over an extended period of time, was held to constitute prima facie proof of the systematic exclusion of Negroes from jury service.

A. UNDISPUTED EVIDENCE

The State entered into four stipulations with the defense. See Hale v Kentucky, 303 U. S. 613 (1937); Hernandez v Texas, 347 U.S. 475 (1954). These stipulations are listed as exhibits 31, 32, and 33, also see transcript page 171. The stipulation proves that Negroes in Orleans Parish not only constitute a substantial segment of the population of the jurisdiction, but that many were qualified to serve as jurors. This stipulation alone and unaided by the other evidence makes a prima facie case of exclusion of Negroes.

Some of the most revealing facts shown by the stipulation of May 20, 1963 (exhibit #32) are:

1. That in Orleans Parish during the nine year period from 1954 to 1962, 18 Grand Juries totaling 216 men had been selected. Out of these 216 men only 23 or 10% were Negroes.
2. That of 18 grand juries:
   One had three Negroes; nine had two Negroes; two had one Negro; six had no Negroes; thirty-three per cent of the Grand Juries selected in Orleans Parish between 1954 and 1962 had no Negroes at all on them.

   Note that Daniel E. Knowles, Chairman of the Orleans

Parish Jury Commission, in his return to the subpoena Duces Tecum (see exhibit # 30) lists six categories of people on the General Jury Venire. He maintained that in response to the question of race on the subpoena sent to the prospective general jury veniremen, some people did not write in an answer, others put black, others put Negro, others put Caucasian, others put white, and yet others put colored. Consequently, Mr. Knowles lists the race of prospective general jury veniremen as undetermined, Caucasian, White black, Negro and Colored. In compiling the statistics below, counsel considered those persons who listed themselves as white or Caucasian to be Caucasian; the persons who listed themselves as Colored, Black or Negro to be Negro; and those who were listed in the undetermined category were first put in the Caucasian group getting a total most favorable to defendant and second put in the Negro group getting a total most favorable to the State.

3. That out of the Grand Jury Venires in Orleans Parish from 1954 to 1962 which ranged from a minimum of 75 men to a maximum of 125, assuming that figure most favorable to the State, there have never been more that 15 Negroes in any Venire.

4. That out of 18 Grand Juries a Negro has never been selected as Grand Jury foreman.

5. Out of 607 names in the jury wheel as of January 1, 1962:

    a. Using the figure most favorable to the State, 118 or 19% were Negroes.

    b. Using the figure most favorable to the defense, 84 or 13% were Negroes.

6. Out of 1200 persons called for petit jury service as of January 1, 1962:

    a. Using the figure most favorable to the State, 198 or 16% were Negroes.

    b. Using the figure most favorable to the defense, 138 or 11% were Negroes.

7. out of 1550 persons who were on the grand jury venire from 1954 to 1962:

    a. Using the figure most favorable to the State, 208 or 13% were Negroes.

    b. Using the figure most favorable to the defense, 144 or 9% were Negroes.

8. Out of 3,210 persons who actually served on petit juries from January 1, 1962 to December 31, 1962:
    a. Using the figure most favorable to the State, 512 or 15% were Negroes.
    b. Using the figure most favorable to the defense, 379 or 11% were Negroes.
9. That of a population of 627,525; 233,514 are Negroes.
10. That out of 197,159 voters; 34,681 were Negroes.
11. That there are 14,934 Negro male voters between the ages of 21 and 65 years of age.
12. That there are 27,714 Negroes who had finished at least the seventh grade
13. That there was 10,450 non-white families with incomes in excess of $5,000.00 in 1959.
14. That there were 15,879 non-white owners occupied homes in Orleans Parish.

1954 was used as a starting point because that was the year Freddie Eubanks was tried and convicted for murder. This conviction was reversed by the United States Supreme Court, because Negroes had been excluded from Grand Juries in Orleans Parish for a number of years. See Eubanks v. Louisiana, 356 U. S. 584.

B. OTHER UNDISPUTED EVIDENCE

Once appellant made out his prima facie case it was the burden of the State to refute it. Norris v. Alabama, supra; Patton v Mississippi 332 U.S. 463; Avery v Georgia, 345 U.S. 559. The State called one witness during the trial of the Motion Challenging the Jury Commission etc. while the mover called twenty-one witnesses. In a very real sense all of the evidence on the Motion Challenging the Jury Commission and the Motion Challenging the Petit Jury is undisputed. How then can it be said that the state refuted defendant's prima facie case when as a practical and legal matter the one witness called by the state testified only as to why he as a chairman of the Jury Commission later produced evidence which earlier as a witness for mover he said he couldn't produce.

B. 1. Summary of Testimony of Daniel E. Knowles, Chairman of Orleans Parish Jury Commission, when called as witness for mover'

A stipulation was entered into between the state and the defense to the effect that if any of the other jury commissioners were called they would testify the same as Mr. Knowles.

(Tr. page 171)

Mr. Knowles testified that he was appointed as a member of the Jury commission in 1952; that he remained a member for seven years, was off for ten months and then was appointed Chairman of the jury commission which he has been for the last three years.

He testified that the names of prospective jurors were secured from the city directory and on occasion from the telephone directory and that the real estate tax rolls were never used.

The commission, he said, did not make any special effort to include Negroes and that no information as to race was kept in the files. Mr. Knowles contrary to his testimony did identify the subpoena used to summon prospective jurymen. This subpoena has questions on the reverse side which are to be filled out by the prospective jurymen and turned in to the commission office when they report there. One of the questions is the race of the prospective juryman.

Mr. Knowles further testified that this subpoena was kept as a part of the commission's permanent file and is kept for as long as eight or ten years. This record is only removed from the file on the death of the juryman or upon notice that he has moved out of the jurisdiction.

Mr. Knowles said that some people when answering the question as to race put down the letter "C". This could mean "C" for Colored, or "C" for Caucasian. Others, he said do not answer the question. Consequently, it is not possible in all instances to tell from the record the race of the party.

Mr. Knowles testified that the purpose of the question as to race was to [illegible] the commission that they:

> "...were sending out notices for colored persons and that they were responding, while certain people were contending we never sent out jury notices to Negroes..."

B. 2. SUMMARY OF TESTIMONY OF MEMBERS OF THE BAR

The defendant on the trial of the Motion Challenging The Jury Commission etc., called eight well-known members of the bar who had practiced criminal law extensively, among these persons were three ex-District Attorneys. In essence each was asked "Did you ever see or personally witness the trial of a capital case in which a Negro sat on the jury?"

The responses given were as follows:

1. Severn T. Darden, who had practiced since 1930 and who was District Attorney for Orleans Parish from 1950 to 1954, said: (Tr.230)

   > "The cases I personally tried I don't recall a Negro being on the jury. I recall, however, many Negroes in the venire. The point I would like to make that it was (sic) my policy to systematically exclude them from the petit jury, those decisions were reached in each particular case both by the State as well as the defense counsel."

2. Leon Hubert, admitted to practice 1934, full time professor of law at Tulane from 1946 to 1954 and Orleans Parish District Attorney from 1954 to 1958 said: (TR. 219)

> "I am not sure about that. I have a recollection while I was District Attorney, there was one or two cases tried by one of my assistants in which there were Negroes on one of the petit juries, but I am not certain about that really."

Another question asked Mr. Hubert was: (TR. 218)

> "In those capital cases in which you personally participated, can you remember whether or not there were any Negroes that served on the petit jury that sat in judgment on a capital case?" His answer was, "I do not believe so."

3. Richard A. Dowling, practicing since about 1928 with breaks in between for public office, also served as District Attorney from 1958 to 1962. He testified in essence that the only case he had any recollection of was one and that involved a Negro defendant and female Negro victims. He also testified that while district attorney, he did not know of any rape case with a white victim and Negro defendant where Negroes sat in judgment on the jury.

4. Mr. Bentley G. Byrnes practicing since 1933 and currently in the practice of criminal law, was asked: (TR. 221)

> "In the time that you practiced law, criminal law, Mr. Byrnes, have you either tried a case or witnessed a case in which a Negro served on a jury in a capital case?"

His answer was, "no."

5. Mr. F. Irving Dymond who had been practicing criminal law since 1937 with the exception of the years he was in the service, was asked: (TR. 224)

> "Mr. Dymond, have you ever either tried or witnessed a case in which a petit jury had Negroes that actually served in a capital case?"

He answered, "To the best of my recollection, no, I have not."

6. Mr. Joseph F. Monie, who had been practicing criminal law since 1924, was asked: (TR. 225)

> "Have you either tried or witnessed a case being tried, a capital case in which a Negro served on the petit jury?"

He answered, "Not to my recollection, no sir."

7. Mr. Rudolph F. Becker, Jr., who had been practicing since 1927: The question put to him was substantially the same as the questions above recited. He answered: (TR. 226)

> "That I don't recall whether or not a Negro has served on the petit jury in which I was a participant, but I can remember and do know that Negroes have always been on the panel of every capital case I was ever interested in or participated in. I know they were on the panel, but whether or not any actually served on the petit jury...I would say this that from my technic that I used, I would say that I never did accept a Negro on a capital case where I had a Negro to defend."

8. Sam Monk Zelden, who had been practicing since 1933, was asked: (TR. 227)

> "During that tenure as a criminal lawyer, Mr. Zelden, have you ever tried or witnessed a case in which a Negro has served on the petit jury in a capital case?"

> Mr. Zelden responded:

> "To the best of my recollection in answer to that it would be no. The last case that sets the fact you state would be the Eubanks case and in that case the boy was charged with murder and to the best of my recollection there was no colored member of the jury that sat to hear that case."

9. Judge Malcolm V. O'Hara was asked substantially the same question as the previous eight lawyers, he testified: (TR. 231)

> "I believe that during the period 1954 to 1958 when I was an assistant district attorney that I participated in either two or three cases in which Negroes sat on the petit jury. I am not positive of that, but I believe there were actually Negroes sworn and empanelled and sat on the jury... one of them, I believe, was the case of State v Atlas, which was a rape case, and, I believe, I am almost positive there was a Negro on that jury."

Question:

> In the rape case that you mentioned, Judge, do you remember the race of the victim?

Answer:

> Both parties were colored.

Question:

> During the time that you practiced as a defender of persons charged with crimes, do you remember or do you recall any case in which a Negro sat on a petit jury in a capital case?

Answer:

No, I don't believe.

B. 3. SUMMARY OF TESTIMONY OF CRIMINAL DISTRICT COURT JUDGES

The defendant on the trial of the Motion Challenging the Jury Commission etc., called seven of the 8 judges of the Criminal District Court to testify.

Judge William J. O'Hara, retired, 30 years experience as judge, was asked: (TR. 234)

> "Judge, what standards did you use in determining the eligibility of a person to serve on your grand jury?"

He answered:

> "Well, I use the same standards of eligibility regardless of who, of the color of the person ... you see a great many people ask to be excused. You need a venire of 75. I have seen it where a judge only had 16 men left on the panel and had to select a grand jury from 16. So at first when I selected the grand jury with these two colored, men, and I recall very well that I only had three to select from. I could have selected three. I selected two out of the three and what guided me about whether to take two or three was that I tried to take the colored people, the approximate number on the jury panel and that is to say the approximate number of colored on the venire at the time." (underscoring ours)

The following question was asked of Judge O'Hara by the State:

> (TR. 237)
> "Judge O'Hara, during the time you have served as Judge of the Criminal District Court have there ever been any capital cases involving Negro defendants where a Negro served on the petit jury which tried those particular cases?"

Answer:

> "No. You mean on the jury?"

Question:

> "On the jury?"

Answer:

> "No, not that I know of."

Judge Thomas M. Brahney, Jr., who has been a judge since 1958 was asked:

(TR.243)
"Have Negroes ever served on a petit jury in a capital case in your section?"

Answer:

"Off-hand I can't recall. They have or may have served in the Augustine case, but I don't recall off-hand."

On this point on cross-examination the Judge was asked:

"Augustine was a colored defendant charged with a capital offense that Mr. Dowling personally prosecuted?"

Answer:

"I don't know if Mr. Dowling did, but it was colored on colored. I don't recall who prosecuted, but I know Mr. McCain (sic) defendant."

Judge Edward A. Haggerty, Jr., a judge since 1956, was asked:

(TR. 247)
"Judge, have any Negroes ever served on a petit jury in a capital case in your section of the Criminal District Court?"

Answer:

"I am trying to recall. I don't know. I have handled about three capital cases in the last six and one half years. I don't recall, but if I had been requested...I am under the impression that in the Dozier Brown case there was a Negro and If I am not mistaken in the Henry G. Hills, but in the Hills I don't remember if there was or wasn't, but in the Dozier Brown case which was a capital case I have a recollection in my mind there was one Negro but I would have to get the record to confirm it. There was a Negro in the Dozier Brown....That was the murder case and not a rape case.........I am under the impression that there was (The next sentence or so on the transcript is not readable)...there was a Negro because I had to call up and get a place for them to stay, they were using upstairs and in another capital case, and I got the DeSoto Hotel to take them over night. I am positive there was a Negro in the Dozier Brown case because I remember getting them a room at the DeSoto Hotel to stay over night, so the answer is yes, there was.

George P. Platt, 28 years a judge, was asked:

(TR. 251)
"In selecting these two persons to serve on the grand jury, what standards did you apply?"

Answer:

> "Well, I wanted to get some Negroes on the grand jury and I worked with them trying to get intelligent men, and I could only find two that were willing and able to serve and I put them on the grand jury. In the days before we didn't have the number of Negroes that we have on the jury panel today."

A little later the following was asked:

> "Judge, did you change your policy with reference to selecting or the selection of Negroes on the Grand Jury based on the decision in the Eubanks case?"

Answer:

> "I may have worked a little harder trying to get a good Negro on the Grand Jury."

Judge Platt was also asked: (TR. 254)

> "Judge, you stated earlier that you worked harder, with reference to your working harder after 1954 to see that Negroes were included on the grand jury, is that correct?"

Answer:

> "Yes, I tried to get as many colored men or Negroes I could get on the panel, but as far as the number of Negroes, you have just 7 or 8 colored men and 65 to 70 white men."

A little further on Judge Platt testified: (Tr. 255)

> "...As far as I am concerned personally, yes, I didn't give any particular attention to Negroes, but now I do want to get as many as I can so there were no questions raised about excluding Negroes." (underscoring ours)

The District Attorney, in cross-examining Judge Platt, asked him: (TR. 256)

> "Now, Judge, I believe you said that since 1954 that you have gone out of your way or that you have worked very hard to see that as many colored as possible would be on the grand jury, which is the term that you used before, but that your qualifications for jurors has not changed?"

Answer:

> "No, I just spend more time and we are getting more colored who will serve."

Question:

> "They still have to have the same qualification?"

Answer:

"In sofar as qualifications, yes, certainly."

Oliver P. Schulingkamp, Judge since 1960, was asked: (TR. 258)

"Judge, in that kind of reasoning, have you found Negroes to be any less qualified than other prospective jurors?"

Answer:

"Yes, I have."

Question:

"You found them to be less qualified?"

Answer:

"Yes."

Question:

"Considering the fact judge that you found them less qualified, is it a fact that this results in your selecting only two?" (underscoring ours)

Bernard J. Bagert, Judge since 1956, was asked: (TR. 262)

"Now, Judge, in that vain (sic) do you find that Negroes in the venire have been any less qualified than their white counterpart?"

Answer:

"Percentage wise, I would say yes. I might add another reason which I didn't include is there is the ability to give the state the time that is required. That is another important feature I look for and that I discuss with the prospective jurors."

Judge Bagert was also asked: (TR. 262)

"Judge, am I correct in assuming that...you selected the grand jury that is presently serving?"

Answer:

"Yes."

Question:

"Do you recall how many Negroes, if any, are serving on that grand jury?"

Answer:

"To my knowledge there are two."

Question:

> "Judge, have you made any conscienous (sic) effort to include Negroes on the grand jury that you have empanelled?"

Answer:

> "I made a serious effort to interrogate a number of people to get what I consider a good jury and I interrogated some 35 to 40 persons at the time."

Question:

> "Did you make any effort, though, to be sure that Negroes were included?" (underscoring ours)

Answer:

> "Yes, I did." (underscoring ours)

A little further on Judge Bagert was asked: (Tr. 263)

> "In all the cases that you have presided over, capital cases, have you ever seen a Negro serve as a member of the petit jury?"

Answer:

> "In a capital case?"

Question:

> "Yes."

Answer:

> "Not to my recollection, no sir."

Question:

> "In your experience...for what period of time did you practice criminal laws?"

Answer:

> "I was admitted to the bar July 15, 1935 and I practiced criminal law along with the general practice of law until the weekend of July 4, 1942 when I went on active duty as an officer of the U. S. Coast Guard and I returned back to the practice of law on October 29, 1945."

Question:

> "And during that period, judge, do you recall ever seeing a Negro serve as a juror on the petit jury in a capital case?"

Answer:

> "Not in a capital case."

Appellant's conclusion that he has established a prima facie case which the state has failed to rebut rests on the following law:

> "...When a jury selection plan, whatever it is, operates in such a way as always to result in the complete and long continued exclusion of any representative at all from a large group of Negroes, or any other racial group, indictments and verdicts returned against them by juries thus selected cannot stand."
> Patton v. State of Mississippi, 1947, 332 U.S. 463, 469, 68 S.Ct. 184, 187, 92 L.Ed. 76.

> "An accused is entitled to have charges against him considered by a jury in the selection of which there has been neither inclusion nor exclusion because of race."
> Cassell v. State of Texas, 339 U.S. at 287, 70 S.Ct. at 632.

> "Jurymen should be selected as individuals, on the basis of individual qualifications, and not as members of a race."
> Cassell v. Texas, 339 U.S. at_____, 70 S.Ct. at____.

> "The jury commissioners, and the other officials responsible for the selection of this panel, were under a constitutional duty to follow a procedure- 'a course of conduct' - which would not 'operate to discriminate in the selection of jurors on racial grounds.' If they failed in that duty, then this conviction must be reversed no matter how strong the evidence of petitioner's guilt." Avery v State of Georgia 345 U.S. 559 (1953).

> "Even if the white and yellow tickets were drawn from the jury box without discrimination, opportunity was available to resort to it at other stages in the selection process." Avery v. State of Georgia 345 U.S. 559 (1953)

> "If one factor is uniform in a continuing series of events that are brought to pass through human intervention, the law would have to have the blindness of indifference rather than the blindness of impartiality not to attribute theuniform factor to man's purpose.

> "The purpose may not be of evil intent of in conscious disregard of what is conceived to te a binding duty. Prohibited conduct may result from misconception of what duty requires..." Cassell v. State of Texas, 339 U.S. 282 (1950).

Finally appellant also relies on the test outlined in Norris v. Alabama, supra, which in essence says long continued, unvarying, wholesale exclusion of Negroes establishes discrimination.

Our prima facie case comes from the stipulations, the testimony of the Jury Commission Chairman and the testimony of the criminal lawyers and criminal judges. Our complaint is that the jury system fair on its face was not impartially administered. The stipulations show beyond contradiction that there are available in Orleans Parish many, many Negroes qualified to serve on the grand and petit juries. The stipulations show beyond contradiction that only once in 9 years were 3 Negroes selected to serve on the same grand jury. In a situation such as this where it takes 9 votes to make a quorum it is the same as if the grand jury were composed of 9 men and no Negroes were ever selected to serve. The language of the dissent in the case of Akins v Texas, 325 U.S. 398 (1945) is particularly appropriate at this point:

> "...The State of Texas in insisting upon one Negro representative on the grand jury panel, has respected no right belonging to the petitioner. On the contrary, to the extent that this insistence amounts to a definite limitation of Negro grand jurors, a clear constitutional right has been directly invaded. The equal protection clause guarantees petitioner not only the right to have Negroes considered as prospective veniremen but also the right to have them considered without numerical or proportional limitation. If a jury is to be fairly chosen from a cross section of the community, it must be done without limiting the number of persons of a particular color, racial background or faith--all of which are irrelevant factors in setting qualifications for jury service. This may in a particular circumstance result in the selection of one, six, twelve, or even no Negroes on a jury panel. The important point, however, is that the selection must in no way be limited or restricted by such irrelevant factors." (underscoring ours)

To show that race was a factor in the selection of the few Negroes who did serve on the grand juries, one need only fairly read the previously quoted testimony of the Judges of the Criminal District Court.

It is anticipated the State will argue that no evidence was introduced to show that Negroes were systematically excluded and only a token number included on the grand jury which indicted appellant. The short answer to this is that the demise of the Judge who empanelled said grand jury precluded such testimony. But be that as it may our showing of the system of partiality towards whites and against Negroes over a nine year period precludes any necessity for showing direct partiality in this case.

Should the above answer be not satisfactory, it is suggested that a prima facie case of exclusion-inclusion was shown on the petit jury venire. There is testimony which shows that Negroes never sat on the petit jury during the trial of capital cases. The State will say this is the result of the constitutional use of peremptory exceptions. We say the jury commissioners had a duty to see to it that all qualified persons irrespective of color were placed on the general jury venire. This would assure the selection of some Negroes on many if not most of the petit juries.

We respectfully submit that on the stipulations and testimony adduced amount to a prima facie case of systematic exclusion-token inclusion of Negroes on the general jury venire, grand jury venire, grand jury, petit jury venire and petit jury which the State has failed to rebut.

BILL OF EXCEPTION NUMBER 6

During the trial of the Motion to Set Aside the Jury Commission etc., Daniel E. Knowles, Chairman of the Orleans Parish Jury Commission was first called as a witness for the mover and later called as a witness for the State.

Mr. Knowles when called as a witness for the State testified on cross-examination that race was a question on the subpoena sent to prospective general jury veniremen; had been so since 1954; had been added to the questionaire while he was a member of the commission and was put on because "...It was contended by certain people that we were not including Negroes on the Jury wheel and so we des....we decided to put race there for our own information." (Tr. 272)

The defense was denied the right to question Mr. Knowles as to whether the commission sought advice from an attorney on this matter, and was denied the right to find out what function the racial designation served on the ground that the question had already been answered. This exception covers these two denials.

When considering qualifications of prospective jurymen race is irrelevant. The existence of such question creates a rebuttable presumption that the administration of the jury system is fatally defective. In this posture then it is incumbent upon the State to show that the question was there for some permissible purpose.

We say that the function of the question as given by the witness Mr. Knowles was an equivocal answer requiring explanation. Even assuming the veracity of the answer we say it presumes upon ones intelligence when the best way to show that Negroes are on the juries is to have Negroes on the jury.

The question asked Mr. Knowles went to the heart of the inquiry. The trial judge said the question was relevant but had already been answered.

Our first position is that as answered the question on the subpoena was unpermissible. Our second position is that even as answered the answer was equivocal and that such summary denial of the question asked was an abuse of the trial court's discretion and a denial of the right to cross-examine.

Any cross-examination of Mr. Knowles reasonably calculated to show the circumstances surrounding the creation the question as to race on the subpoenas is permissible, particularly on cross-examination.

Only a strained construction leads to the conclusion that the question asked was immaterial and irrelevant.

We maintain that the application of law made by the trial court under the circumstances outlined in the bill of exception was prejudical to the rights of defendant, was an abuse of the court's discretion and denied defendant the right to cross-examination.

BILLS OF EXCEPTIONS NUMBERED 8 AND 9

Bill of exception number 8 was taken during the trial of the Motion To Set Aside the Jury Commission etc., and during the testimony of Judge Oliver P. Schulingkamp when called as a witness for the mover. During his testimony on direct examination Judge Schulingkamp testified that he had found Negroes to be less qualified to serve than other prospective jurors; that he had empanelled only one grand jury and that the fact that he found Negroes to be less qualified was an element in his only selecting two Negroes on the grand jury. The State on grounds that the question was immaterial objected and was sustained when Judge Schulingkamp was asked:

> "Now Judge, do you feel that in this city out of the total number of persons of age over 21 years and male that the Negroes are less qualified to serve as jurors than their counterparts?"

Bill of exception number 9 was also taken during the trial of the Motion to Set Aside the Jury Commission, etc., and during the testimony of Judge Edward A. Haggerty, Jr., when called as a witness for the mover. During his testimony on direct examination Judge Haggerty testified that among the persons who comprised the grand jury venire that he interviewed "...I would say truthfully under oath that the general intelligence quotient of the Negroes among the 73 that I interviewed were lower in intelligence than the white persons."

The court on the basis of irrelevancy prohibited Judge Heggerty from answering the following question:

> "Well then Judge would you say that the Negroes on this grand jury venire were less qualified, did this fact result in your selecting only two rather than a higher number of the twelve."

The defense maintain that the prohibited questions asked the Judges are extremely relevant particularly in the light of the facts concluded in the stipulations and in the light of the testimony of all of the Judges.

The defense has shown that out of 18 grand juries totalling 216 men only 23 Negroes were chosen.

The defense has shown that out of 18 grand juries none had four or more Negroes on it.

Only one had three Negroes, Nine had two Negroes, two had one Negro and six had no Negroes on it.

In the Motion to Set Aside The Jury Commission etc., we allege that Negroes were excluded and only a token number included solely by reason of race . There is a direct relationship between the fact that in' the whole history of Orleans Parish there has never been a grand jury with four or more Negroes on it and the character of the administration of the jury system in Orleans Parish.'

The relationship can be shown by a fair evaluation of the following testimony, Judge William J. O'Hara (Tr. 234

> "...So at first when I selected the grand jury with these two colored men, and I recall very well that I only had three to select from. I could have selected three. I selected two out of the three and what guided me about whether to take two or three was that I tried to make the colored people, the approximate number on the jury panel and that is to say the approximate number on the venire at that time."

Judge George P. Platt (Tr. 251)

> "Well, I wanted to get some Negroes on the grand jury and I worked with them trying to get intelligent men, and I could only find two that were willing and able to serve and I put them on the grand jury. In the days before we didn't have the number of Negroes that we have on the jury panel today."

A little later the Judge was asked:

> "Judge, did you change your policy with reference to selecting or the selection of Negroes on the grand jury based on the decision in the Eubanks case?"

Answer:

> "I may have worked a little harder trying to get a good Negro on the grand jury."

Judge Platt was also asked (Tr. 254)

> Judge, you stated earlier that you worked harder, with reference to your working harder after 1954 to see that Negroes were included on the grand jury, is that correct?"

Answer:

> "Yes, I tried to get as many colored men or Negroes I could get on the panel, but as far as the number of Negroes, you have just 7 or 8 colored men and 65 to 70 white men."

A little further on Judge Platt testified (Tr. 255)

> "...As far as I am concerned personally, yes, I didn't give any particular attention to Negroes but now I do want to get as many as I can so there were no questions raised about excluding Negroes."

Judge Bernard J. Bagert (Tr. 262)

> "Now, Judge, in that vain (sic) do you find that Negroes in the venire have been less qualified than their white counterpart?"

Answer:

> "Percentage wise, I would say yes...."

Question:

> "Judge, have you made any conscienous (sic) effort to include Negroes on the grand jury that you have empanelled?"

Answer:

> "I made a serious effort to interrogate a number of people to get what I consider a good jury and I interrogated some 35 to 40 persons at the time."

Question:

> "Did you make any effort, though to be sure that Negroes were included?"

Answer:

> "Yes, I did."

The defense denies that the conclusions above recited are correct. Rather these statements are mere subjective conclusions unsupported and unexplained.

Generally ones private notions about the intelligence or lack of same in Negroes is irrelevant to any criminal inquiry. However, where the person bearing such private notion is charged with the public duty of administering justice, unsupported private notions must give way to the duties of public office.

The danger in certain public officials holding private notions and giving expression to them is that said conclusions are by virtue of the office given the imprimatur of law.

It would seem that in the present stage of the development of constitutional law any acknowledgment of the inferiority on one race as against another for judicial purposes demands some extensive explanation. The questions here asked and denied go directly to the heart of the inquiry. The summary denial by the trial court deprived defendant of the right to fully inquire as to the standards used in determining who shall and who shall not serve on grand juries.

Taken in conjunction with the other facts elicited on the trial of this case the conclusion by the administrators of the jury system that Negroes are less qualified to serve than whites make for a strong prima facie showing of systematic exclusion-inclusion of Negroes.

The same judicial treatment given to an earlier erroneous conclusion should be given to those here. In Neal v Delaware, 103 U.S. 370 the decision quoted the trial court as saying:

> "...That none but white men were selected is in nowise remarkable in view of the fact-too notorious to be ignored that the great body of black men residing in this State are utterly unqualified by want of intelligence, experience or moral integrity to set on juries...."

In disposing of the question the Court said:

> "...It was, we think, under all the circumstances a violent presumption which the state court indulged, that such uniform exclusion of that race from juries, during a period of many years, was solely because in the judgment of those officers, fairly exercised, the black race in Delaware were utterly disqualified, by want of intelligence, experience or moral integrity, to sit on juries...."

On the basis of the record herein those charged with administering with an equal eye and hand the jury system have failed to show that such was done.

CONCLUSION

WHEREFORE, it is respectfully submitted that the trial court committed prejudicial error in each of the rulings complained of in Bills of Exception Numbered 1, 3, 4, 6, 8, 9 and 10, and it is prayed that the verdict and sentence rendered be set aside, anulled and vacated and the defendant discharged, or in the alternative that the defendant be granted a New Trial and for all appropriate and equitable relief.

Respectfully Submitted
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BY:____________________________

CERTIFICATE OF SERVICE

I, NILS R. DOUGLAS, a member of the bar of the State of Louisiana, hereby certify that a copy of this original brief on behalf of appellant has been mailed by United States mail, postage prepaid, to the District Attorney for the Parish of Orleans, namely, Jim Garrison, at the Criminal Courts Building, 2700 Tulane Avenue, New Orleans, Louisiana.

NILS R. DOUGLAS

546 SEDFRE

Louisiana vs B. Elton Cox, Jan 29-31, 1962
(Transcript of Trial)

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NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CRIMINAL SECTION

. . . .

STATE OF LOUISIANA

VS.

B. ELTON COX

. . . .

NUMBERS 42,199 - 42,202

HEARD

JANUARY 29-31, 1962

. . . .

HONORABLE FRED A. BLANCHE, JR.,

JUDGE PRESIDING

. . . .

APPEARANCES:

SARGENT PITCHER, JR., ESQ. JOHN F. WARD, JR., ESQ. ALEX W. WALL, ESQ.	FOR STATE
JOHNNIE A. JONES, ESQ. MURPHY W. BELL, ESQ.	FOR DEFENDANT

Reported by
Rosalyne B. Dobbs
Reporter

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MONDAY, JANUARY 29, 1962

The trial of these cases was begun:

MR. PITCHER: If Your Honor Please, Nos. 42,200, 42,201 and 42,202 are "State of Louisiana vs. Elton Cox." These are four different bills. I don't know whether counsel for defendant wants a separation of these trials or not, but inasmuch as the evidence in all of them would be practically the same, I would like to ask the Court to consolidate them without objection from counsel. Otherwise, we can stay here and run over the same thing about four times and be here till next week. Do you have any objection?

MR. JONES: You want to consolidate them --

MR. PITCHER: Just for trial, for the purposes of trial.

MR. JONES: You want the

evidence in one --

MR. PITCHER: To apply in all of them.

MR. JONES: I have no objection.

THE COURT: I don't see any reason why it shouldn't because they grow out of the same transactions, don't they?

MR. PITCHER: Yes, that's right.

MR. JONES: Your Honor, I would like to move to associate attorney Murphy Bell on the case with me.

THE COURT: All right.

MR. JONES: I would like for the record to show that he is now being associated on the case.

THE COURT: Show a minute entry to that effect.

MR. PITCHER: No objection.

MR. JONES: I would also like for the record to show that this case is one where the defendant is being charged for the protest of racial segregation and that within the Courthouse itself that the defendant is being tried in that racial segregation is being practiced and that there are interested parties, citizens on the outside of court waiting --

MR. PITCHER: I object to the remarks of counsel --

MR. JONES: -- who are interested in the case and that there are seats vacant in the court which are being reserved for the whites and that the Negro citizens who are interested in the case and the outcome of the case are not permitted to utilize these seats. I would like for that to be made a part of the record.

THE COURT: Also, let the record show that it has been the practice and custom in the East Baton Rouge Parish Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white, and let the record especially show that the judge in this case ordered that half of the seats that were formerly reserved and available for white people are now being occupied and filled by colored people.

MR. PITCHER: If Your Honor Please, while Your Honor is well aware of what is going on, I am sure that the Supreme Court of the United States will not be, and for that reason, I ask that Your Honor appoint a Deputy Sheriff to personally count the number of people in this room to be able to testify as to the number of people present in court and the seats available and the number of white people present. I think the State is entitled to that.

THE COURT: All right.

(A Deputy Sheriff was so appointed by the Court at this time and ordered to count the people in the courtroom while the proceedings were going on.)

MR. JONES: If the count is to be made, Your Honor, we would also like to make a count of those who are waiting on the outside.

THE COURT: Count them, too.

MR. JONES: And count the number of seats that are still available.

THE COURT: All right.

MR. PITCHER: Ready?

THE COURT: Yes.

MR. PITCHER: Call Mr. Isidore Larguier.

ISIDORE LARGUIER, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q State your name, please, sir.

A Isidore Larguier.

Q How long have you lived in the Parish of East Baton Rouge?

A Forty-six years.

Q And where are you employed?

A Humble Oil Company.

Q How long have you been employed by the Humble Oil Company?

A Twenty-five years.

Q Do you have any connection with the Sheriff's office or District Attorney's office or the Police Department of the City of Baton Rouge?

A No, sir.

Q Were you present downtown in downtown Baton Rouge on December 15, 1961?

A Yes, sir.

Q Did you have occasion to see anything unusual on that date?

A Well, I saw the whole thing from start to finish.

Q Talk a little louder, Mr. Larguier.

A I did see the whole thing that happened that day. I was off on sick leave from Standard Oil and hadn't gone back yet and so I came down expressly to observe.

THE COURT: What was the date again?

MR. PITCHER: December 15, 1961.

Q Where did you first see anything unusual?

A On the corner of North Boulevard and St. Ferdinand.

Q Now, when you say "North Boulevard and St. Ferdinand," do you -- are you referring to the location of the Old State Capitol?

A On the corner of the Old Capitol, yes, sir.

Q What did you see there?

A I saw the very large number of colored people lined up from that corner by the iron fence on the corner all the way down to the depot.

Q How many colored people would you say were eventually in that crowd, an estimate?

A I didn't try to estimate them myself, but I heard other people estimate it at two thousand.

Q Now, did you see what happened to that crowd after it gathered at the Old State Capitol grounds?

A I was standing there on the corner with a group of other citizens and overheard the deputy from the Sheriff's office go over and talk to the leaders.

Q When you say the "leaders," do you recognize any of the leaders sitting in the courtroom today?

A I recognize one of them, the man, the Reverend over here (indicating).

MR. PITCHER: Let the record show he indicated the accused Cox.

Q Did you see that man in the crowd that day?

A Yes, sir, I saw him with another real dark colored person that appeared to be the leader of them, also.

Q What did Cox do to make you come to the conclusion that he was the leader?

A He was right there at the head of it with the other man and seemed to be giving instructions.

Q You say "seemed to be." Did he give any instructions to the crowd?

A He kept them in line right there until some scheduled time, I suppose.

Q Where did they go from the Old State Capitol grounds?

A They marched down North Boulevard to the -- one block and passed by the parking lot and then down St. Ferdinand across the street from the Courthouse.

Q Mr. Larguier --

BY THE COURT:

Q Which parking lot are you talking about?

A The parking lot on the corner over there by the -- right across here on the corner of North Boulevard and St. Louis.

Q North Boulevard and St. Louis?

A Right there on the corner.

Q Where were they congregated around the Old State Capitol?

A They had the sidewalk across the street from the Courthouse here. They had it all covered from one block to the other.

BY MR. PITCHER:

Q The Judge asked you where were they at the Old State Capitol grounds.

A Oh, they were on the sidewalk from the corner of -- that is St. Ferdinand, isn't it?

Q Not St. Ferdinand.

A St. Phillips and North Boulevard all the way down to the depot.

Q Now, after they left that location around the Old State Capitol you say they came in front of the Courthouse on St. Louis Street, is that right?

A On St. Louis Street across the street from the Courthouse.

Q Now, in getting to the Courthouse from the Old State

Capitol grounds, did they block traffic in anyway?

A Well, they had a steady stream from the time they started until they covered the sidewalk from one end of that block across the street from the Courthouse.

Q Now, that's after they congregated in front of the Courthouse, you say that they had blocked the sidewalk on the west side of the street?

A On the west side of the street.

Q And they blocked the sidewalk completely?

A Well, it was pretty filled up. Two thousand was the estimate of them in --

Q Now, what office -- excuse me.

A -- in front of those law offices.

Q The doors were blocked to those buildings over there.

A Well, the whole sidewalk was covered pretty well.

Q What happened after the crowd congregated there?

A They sang several songs and I think -- I know they had a few prayers and then about -- it was a very spontaneous reaction when they heard the prisoners upstairs singing or --

Q Now, when you say "spontaneous reaction when they heard the prisoners singing," what do you mean by that?

A It sounded more like a football game cheering.

Q The crowd?

A The crowd let out quite a loud cheer when they heard the prisoners singing upstairs.

Q What happened after that?

A Well, I was standing on this side of the street watching the whole procedure and --

BY THE COURT:

Q Where were you standing, Mr. Larguier?

A I was in the Courthouse grounds in front of the side -- main entrance to the Courthouse here.

Q Which side of the Courthouse?

A West side of the Courthouse.

Q And when you saw them on the -- you say sidewalks across St. Louis Street?

A Yes, sir.

Q How far did they extend on the sidewalk in that block?

A The whole block was covered. The whole block from one end to the other.

Q Do you know what block I am talking about?

A Yes, sir, I am talking about the same block as the Courthouse occupies across the street, the whole block.

Q Were there any in the street, any people in the street?

A I can't say. The leader and several other assistant leaders appeared to be -- were walking up and down in front of the crowd. They were the ones that were in the street. I didn't notice anybody but the leaders walking up and down the street.

BY MR. PITCHER:

Q As I understand it, Mr. Larguier, you were just a bystander, is that correct?

A I was just observing.

Q You had no connection -- no official connection with the breaking up of this demonstration or anything else?

A No, sir.

Q And you have been a life-long resident of this parish?

A Yes, sir.

Q Did you hear anything that the Sheriff said in the presence of the accused during that time or was it --

A You mean in front of the Courthouse?

Q Right:

A I heard Sheriff Clemmons, he had a sort of a walkie-talkie deal, and I heard hin tell them who he was and introduce Chief Wingate White, and I heard him tell them that he had been very patient with them on their coming down there and that it was time to break it up.

Q Did they leave on request of the Sheriff?

A They didn't leave right away. No.

Q What caused them to leave?

A Tear gas popping all around.

Q In other words, they did not leave on the request of the police officers but it took tear gas to disperse them, is that right?

A Tear gas dispersed them.

BY THE COURT:

Q When they came from the State Capitol, the group, how did they proceed again? Tell me how.

A They crossed the street by the old K. C. Hall and came down in front of that colored funeral parlor, if it is still there, and down paralleling the parking lot and turned to the right by the parking lot down St. Louis.

Q And you saw that whole procession?

A I was walking on the other side of the street right along with them.

MR. PITCHER: I tender the witness.

CROSS-EXAMINATION

BY MR. JONES:

Q I didn't get your full name.

A Isidore Larguier.

Q Spell the last name for me.

A L-a-r-g-u-i-e-r.

Q Mr. Larguier, I think you testified that you saw -- that was December 15th, is that right?

A I think so.

Q 1961?

A Yes.

Q That you saw something unusual?

A Very unusual for me. It was announced I believe in the papers that it was going to take place, on the radio or something. That is why I happened to be observing it. There was going to be a march of some kind.

Q You had heard that over the radio?

A I heard it somewhere.

Q Through the news media, is that it?

A I can't say whether it was on the radio or news or where, but I did hear about it and I am pretty sure --

Q Was it a public announcement that you heard?

A No, I wouldn't say. I don't remember exactly what news media I heard it from, but I do know there was a planned march.

Q Could you tell us whether or not it was a public news media or by some private individual that you heard it?

A No, I can't tell you whether it was public notice or not. I don't think it was.

Q And you say you marched along with them all the way?

A On the other side of the street, yes, along with quite a few other people.

Q Do you know whether or not they stopped for the stop lights, walk lights or not?

A I don't think there was any lights involved.

Q Wasn't any lights involved, is that right?

A There is no light on that corner I don't believe by St. Louis -- I mean by St. Phillips and -- they were already on that corner there.

Q These people assembled here on the west side of St. Louis Street, I believe you testified?

A St. Louis.

Q Do you know whether or not they assembled from the north end of this Texaco Filling Station backwards northward or did they go to the extreme corner and assemble all the way back?

A I think the majority of them came in with that group. There could have been some come in from the other end.

Q I am not asking the way they came from. I am asking where did they start to assemble. Where was the formation of their assemble? Was it from the north end of this Texaco Filling Station? You are familiar with that Texaco Filling Station there?

A I didn't notice whether they walked all the way down and assembled and came back or not. All I know is that the majority of the group came the same way I was coming from north to south on St. --

Q It is your testimony then that you don't know whether or not they assembled all the way from the corner of St. Louis Street in front of this Texaco Filling Station northward or not, is that right?

A Whether they started or something on the other end?

Q Yes.

A No, I couldn't say whether they started on the other end or not.

Q Do you know whether or not that after they had assembled that the assemble was from this corner by the Texaco Station all the way back?

A Well, the sidewalk was covered from one end to the other. I couldn't say whether they marched down at that end and turned around and came all the way back and assembled or not, but all I know is the majority of them came from the north and assembled on that side of the street.

Q Do you know whether or not they assembled in front of this Texaco Station and blocked it off --

A No, I was in the center. I didn't look at it. It appeared to be the entire block being covered to me. Now, I wasn't there. I was right in front.

Q You are not absolutely certain about that, are you?

A About the driveway at the --

Q Yes.

A No, I am not certain about the driveway at the filling station.

Q Now, at the time that this tear gas was thrown, did you notice anything unusual in the reaction of these people who were assembled there?

A Nothing more unusual than the fact that they wanted to get out of the way of it and not get the tear gas on them and quite a bit of confusion in leaving.

Q Did you notice anything they had done other than that they had been doing previously to the throwing of the tear gas, singing and praying?

A Yes, they had asked -- the Sheriff had asked them to break it up, and I think the Reverend here and one or two of his leaders that were helping out, a real dark skinned fellow that was with him, this Reverend told them to go to -- he said something about the people I believe getting hungry. I know you are getting hungry, so go to the designated places and sit until you are waited on.

Q And is that the time that the tear gas was thrown?

A I think it was some period after that.

Q About how long after that?

A It was bound to have been after that, because --

Q Is that the only thing that was out of the ordinary that they were doing prior to the throwing of the tear gas, that he told them to go eat?

Q The only thing out of the ordinary was the unusual cheering that they seemed to react so spontaneously to from the hearing of the singing up above was the only unusual thing other than that that I could notice.

Q Did they do anything violent in their action like they wanted to fight or do anything of that kind?

A I didn't see any violence before that, no. I didn't see anything like that, but it very easily -- the way they reacted to the cheering, I would say it is a good thing it did break up when it did.

Q Did you notice any white people on the opposite side of the street?

A Quite a few.

Q About how many?

A Oh, I would say, judging from the estimates of the crowd of colored people, if there were two thousand over there, I would say somewhere between three and five hundred maybe. I am not --

Q How were they reacting?

A How were they reacting?

Q Yeah. The white people.

A I imagine just like I was, just curious to see what was going on.

Q Were they on the east side of St. Louis Street?

A They were on the east side of St. Louis Street.

Q Were they near the Courthouse?

A I would say that they were on the Courthouse steps and in the Courthouse yard, and there were quite a few law offices on the edge of the curbing and then in the street.

Q This three to five hundred white people that you noticed, were they congregated on this side near the Courthouse?

A They were on the Courthouse steps on that wide sidewalk and on the edges and in the grass along there.

Q Would you say that they were nearer the Courthouse than the demonstrators or Reverend Cox's group here?

A The majority of them were near the sidewalk or on the neutral ground.

Q Were they nearer to the Courthouse?

A No, because it is quite a space between the sidewalk by the street and the Courthouse.

Q I mean --

A Nearer the Courthouse than the people across the street?

Q Yes.

A Naturally, they were on this side of the street.

Q They were nearer the Courthouse than Reverend Cox's group, is that right?

A That's right.

Q And you say that number was three to five hundred?

A As near as I can estimate, including the law officers.

Q What was the attitude of this crowd of white people that was nearer the Courthouse than this Reverend Cox group?

A I can't say what the attitude of anyone other than myself was.

Q What was your attitude?

A Strictly observing and trying to see what the whole thing was going to turn into.

Q You wasn't disturbed about it, were you?

A Not until the, just before the group was broken up, and I was beginning to notice that there could have been trouble from it, up to that point. I wasn't disturbed for my safety, if that's what you mean, because I wasn't going to take any part in anything.

Q You wasn't afraid --

A I wasn't in the law enforcing group or anything like that. I was strictly observing it.

Q You didn't think anything was going to happen to you or they was going to do you anything, did you, sir?

A I wasn't worried about it because I think I could have gotten out of the way if anything had happened myself.

Q Were they doing anything to make you believe that anything might happen to you as a result of that demonstration?

A Only that spontaneous outburst when they heard the prisoners singing upstairs.

Q And what did they --

A It was a little bit -- well, it was even more like, more so than cheering at an exciting football game. I mean they were --

Q What did they really do, sir?

A That's what they really did. There was really some of the loudest cheering I have ever heard for the voices that they had upstairs and -- whistling, screaming, yelling.

Q Did you hear any threats coming from Reverend Cox's group?

A I didn't hear any threats personally.

Q On a whole, sir, would you say that was a peaceable demonstration?

A Well, on a whole, up to that point, I would say it was a peaceable demonstration. I overheard this Deputy Kling go over and talk to the Reverend and this other darker fellow. There were quite a few people trying to take his picture and he kept turning his head. I heard Kling ask what the plans were. I heard him ask what the plans were. I didn't personally hear the answer, but I heard Kling tell back into the group of law enforcers that they were going to make a peaceful --

MR. PITCHER: Your Honor, I object to the answer as not being responsive to the question, and on top of that the accused was not present at the time Mr. Kling made his report to the other people. Just answer the question, Mr. Larguier.

THE COURT: Let's see now. You are trying to relate what somebody else said?

MR. PITCHER: Yes, sir.

MR. JONES: He is on cross-examination --

THE COURT: What he said wasn't in the presence of --

MR. JONES: He said the defendant was present at that time, but he didn't get the defendant's response to the question that Mr. Kling had asked him, but he was telling what Mr. Kling was saying.

THE COURT: All right. I am going to let him go ahead and ask it. Go ahead.

A That's what I say. It was strictly hearsay on what -- that they were going to go down and say one prayer and one song and then break it up, and then they went on down and stayed longer, quite a bit longer than one song and one prayer and that was when I heard the Sheriff say that they had been patient.

Q Is it your testimony then that the law enforcement officers or officer gave them permission to sing one song and pray a prayer on St. Louis Street?

A I told you I didn't hear him with his conversation. I didn't hear him give them permission to do anything.

Q But he did tell them --

BY THE COURT:

Q Did you hear him relate what they were going to do?

A I heard him relate -- that is what I heard them relate that they were going to do.

BY MR. JONES:

Q Did you know whether or not at that time that the officers, the Sheriff or Mr. Kling, objected to the defendant doing that, singing that song and praying that prayer?

A The only objection I heard them say was that they were tired waiting and watching them line up and gather around. That is the only thing. They were blocking the street all the way from that corner all the way to the depot and --

MR. JONES: That's all.

BY THE COURT:

Q Could you -- you didn't try to walk down on the other side of St. Louis Street?

A You mean on that side?

Q Yes.

A No, sir, I didn't try.

Q Would it have been possible for you to have?

A Not unless I wanted to get right into the crowd of people that were gathering there. They pretty well covered the sidewalk from this end down. I didn't notice whether the driveway was blocked but I did notice it was solid from this corner down to the last house.

MR. PITCHER: For the Court's benefit, we have moving pictures which would answer

Your Honor's question better than that.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q Mr. Larguier, with reference to these white people that were gathering on the east side of St. Louis Street that you talked about on cross-examination, you said that in your opinion there was approximately three to five hundred including the law enforcement officials?

A That's right.

Q Do you have any idea how many people work in the Courthouse?

A Well, no, sir, I have no idea.

Q Do you have any idea how many people work in the Municipal Building?

A No, sir.

Q You have no idea how many people work in the immediate vicinity of the Courthouse, do you?

A No, sir.

Q In other words, there was no leader. This was no organized mob of white people, was it?

MR. JONES: I object to the leading question, Your

Honor.

MR. PITCHER: I withdraw it. I will rephrase it.

Q Was there any leadership shown to you in this white crowd of people out there or was it a group of curious people witnessing what was going to happen?

A Well, there were quite a few curious people. I know that because I knew lots of them.

Q There was nobody -- was there anybody out there directing the white people which way to go or where to stand or what to sing or what to say?

A No, sir.

Q In other words, the white crowd, as I gather your testimony, gathered after this demonstrating mob was across the street, is that right?

A I would say that the majority of them did.

Q Did you ever have an occasion to see a handbill, Mr. Larguier, put out -- you haven't seen this handbill (indicating), have you?

A No, sir.

Q You have never seen that?

A No, sir.

Q But you did say that the Reverend Cox said, "Go to the designated lunch counters." Is that right, is that what he said?

A I heard him tell them that -- he was right in front of where I was standing was the reason I heard that.

Q And he said -- what did he say -- "Go -- "

A "To the designated places and sit if you have to for one hour until you are waited on."

Q "Until you are waited on."

A He said, I think -- I don't remember exactly but I think he said, "I know you people must be hungry and go to the designated places and sit if necessary for an hour to be -- until you are waited on."

MR. PITCHER: Thank you. That's all.

RECROSS-EXAMINATION

BY MR. JONES:

Q Mr. Larguier, in that question of "Go to the designated places if you are hungry and sit until you are waited on," was anything violent, within your opinion, in that statement? Is that a statement of a violent nature?

A I wouldn't say it was a violent statement. I think it was an instruction to the people there.

Q That wouldn't incite you to fight, would it?

A No, that probably wouldn't have excited me.

Q Would that statement have excited you to throwing tear gas?

A I am not a law officer so I don't know. No, it wouldn't have incited me to throw tear gas because I wouldn't have had any occasion to be throwing tear gas.

MR. JONES: Thank you.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q Mr. Larguier, then in line with the question asked by counsel, in your opinion, if you were a member of a group that had been ordered to disperse by the chief law enforcement officer of the parish and you refused to disperse and knew they had tear gas, would you have expected to have tear gas thrown at you under the similar circumstances that you saw out there on the 15th of December?

A I think the Sheriff made it pretty emphatic that he wanted it broken up immediately.

Q Before they used the tear gas?

A That's right.

MR. PITCHER: That's all.

MR. JONES: One more question.

RECROSS-EXAMINATION

BY MR. JONES:

Q Before the use of the tear gas, had Reverend Cox instructed this group to go to the lunch counters to get something to eat before the throwing of the tear gas?

A Certainly, because after they threw the tear gas there were no instructions given. There wasn't anybody there to give instructions to.

MR. PITCHER: That's all, Mr. Larguier. Thank you.

WITNESS EXCUSED

. . . .

MR. PITCHER: Mr. Litton.

G. DUPRE LITTON, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q State your full name, please, sir.

A G. Dupre Litton.

Q And what is your occupation or profession, Mr. Litton?

A I am an attorney.

Q How long have you lived in the Parish of East Baton Rouge?

A I attended L. S. U. from 1930 to 1934, and I was out of Baton Rouge between 1934 and 1938, and I have been back here since 1938.

Q Did you have an occasion on December 15th to see this so-called demonstration that took place in front of the Courthouse?

A I did.

Q When did you first become aware that such a demonstration was taking place?

A I had gone out to the Driver's License Division of the State Police and the State Department of Public Safety on North Foster Drive and I was on my way back to my office, and coming west on Government Street I had my radio on, and I heard on the radio that there was a group of Southern University students that were on their way to the Courthouse or on their way up town to have some protest or demonstration. I came and parked my car behind my office, which is behind St. Ferdinand Street. I crossed St. Ferdinand Street, came into the back of the Courthouse grounds. I saw -- knew Bryan Clemmons and a number of deputies, and I walked around toward the center of the Courthouse around the north side of the Courthouse building between the Courthouse and the Municipal Building, and sometimes in the neighborhood of about twelve o'clock I saw the demonstrators appearing. They were coming south on St. Louis Street on the west side of St. Louis Street. I would estimate without being an expert in that field that there were possibly two thousand, that the sidewalk is approximately ten feet wide on the west side of St. Louis Street and most of the buildings other than the one on the corner of St. Louis and America are back some three feet past the sidewalk, and I would say that it would have been difficult to add any to the group that was between the end of the Texaco Filling Station, the north end of the Texaco Filling Station, and America Street on that side of the street. It was solid and I think there were some that had gotten up in the one hundred block. This was the two hundred block where the great majority of them were.

Q In other words, from your testimony, you say that there were approximately two thousand of these people?

A That would be my guess.

Q And that they were congregated on the west side of St. Louis Street between Louisiana Avenue, the street that runs by the Texaco Service Station, and America Street, which is to the north, one block north of Louisiana Avenue?

A That is correct.

Q And did you say it would have been impossible to add anybody to that crowd on that side?

A It would have been extremely difficult.

Q In other words, it was a crowd there in such numbers as to block the entrances to those offices, law offices and buildings on that street?

A It was. You couldn't have gone through it unless someone would have to come out into the street or would have tried to push away to let you pass.

Q In other words then, you saw the entrances to those buildings blocked and the sidewalk completely crowded with these people?

A I did.

Q Now, where were you standing, Mr. Litton?

A Well, I came around, as I said, between the Courthouse and the Municipal Building, north of the Courthouse and I walked around toward St. Louis Street. I came over on the sidewalk just west of the Courthouse on St. Ferdinand Street, and I was on the sidewalk on the east side of St. Louis Street, and on one or two occasions I walked out into the street some three or four feet, and I was not too far from the man who has been identified as Reverend Cox.

Q Do you see him sitting in the courtroom today?

A He is sitting right over there on the end (indicating the accused B. Elton Cox).

Q Mr. Litton, what did you -- what attracted your attention to the fact that the defendant Reverend Cox was the leader of this group?

A He was undoubtedly in charge. He was in the street. The rest were on the sidewalk until the singing started, and then I think a few of the song leaders may have gotten into the street just off the sidewalk, but he stood in the street, and he walked up and down and he gave instructions to them as to come on down a little further and fill in here and move back here, and his instructions were being followed, I would say, implicitly.

Q In other words, in your opinion, was he in complete charge of that mob?

A In my opinion, he was in charge of the whole group.

Q Now, did you hear anything unusual say in the jail or the Courthouse building itself as a result of this group gathering on the street from anything that they may have done out there?

A Yes, the exact sequence of the events escapes me. I haven't attempted to check it back too carefully, but I believe what they did was sing "America" and have a pledge of allegiance to the flag and then there was a hymnor two and a prayer and Reverend

Cox made a talk, and as if at a given signal things became more quiet. Then there was considerable noise which sounded something like singing in the distance and which emanated from the jail in the Courthouse, at which time the entire group on the west side of St. Louis Street began screaming and hollering in very, very loud voices, and it was a pretty definite roar as it came up when they heard the voices from the Courthouse.

A Mr. Litton, had you ever seen anything like this happen in this parish before?

A I had not.

Q Now, were there any white people gathered on the other side of that street?

A I would say that there was no particular gathering of white people on the other side of the street. There were -- naturally, I didn't count them, but I would say that there might have been 150 or 200 people other than law enforcement officials, but I did not notice that they were in any particular congregation or group. There were a number of people on the Courthouse steps on the entrance to the Courthouse, most of whom I saw were employees of the building, and there were some people from the Municipal Building that walked over toward the Courthouse and there were groups of maybe ten or fifteen, but I didn't see any large group of people on the east side of the street.

Q This speech that Cox made, do you recall anything that he said particularly?

A Yes, he said that in effect that it was a protest against the illegal arrest of some of their members and that other people were allowed to picket and that they should have the right to picket and he said that they were not going to commit any violence, that if anyone spit on them, they would not spit back on the person that did it. They said that the law enforcement officers had tear gas and that if anybody shot that tear gas that nobody was going to move. I remember that. Then, Cox also told them what Mr. Larguier testified to a while ago that he knew that they were getting hungry and that they were to go to these certain, I believe, designated lunch counters and if they were not served they were to sit there for an hour, to sit there for an hour. That was shortly before the loud noise and around the time of the loud noise was when Sheriff Clemmons, through some loud speaker after identifying himself, told them that they had been allowed -- that they had been there and he thought that things had gone too far. I don't remember his exact words, but that they were to break it up and to break it up right now.

Q Did they break it up right now?

A They did not.

Q Did you hear Cox say anything at that time?

A Cox, at the time that Sheriff Clemmons said to break it up, Cox showed no inclination of taking any steps in a hurry to break it up, and Cox said something, I know he said "move," but they didn't move.

Q That was right after the Sheriff said to break it up?

A That is correct, and the reason why I feel certain that he didn't tell them to move was because I feel certain that that crowd if he had told them, "Now, everyone walk on off to the south or the north or the right or left in an orderly fashion," I am completely convinced that they would have walked on off.

Q In other words, in your opinion, he was in complete charge of that crowd?

A He gave me the impression of being just like a school teacher that takes little children up to the Capitol to show them the Capitol.

Q And when the Sheriff ordered them to move, the only thing that you heard was "move," but you think that the first word was "don't," is that right?

A That is what I think it was because of the fact that I watched and saw that no movement took place, and if he had said "move" without a word in front of it, I think they would have moved.

Q Did you ever see one of the pamphlets put out by this --

BY THE COURT:

Q What did he say about why they were there?

A He said that they were there to protest the arrest, and I believe he said -- Your Honor, I can't remember it word for word. I think he said to protest the illegal arrest of some of their members for picketing and that other people were allowed to picket and that they should be allowed to picket.

Q And who did he say that to?

A He said that to the group that was on the sidewalk as I have described. Of course, he was saying it loud enough that it could be heard by, I would think by people on both sides of the street.

BY MR. PITCHER:

Q Mr. Litton, did you ever see one of the dodgers put out by CORE designating the twelve stores that they were going to picket?

A No, I haven't.

Q I think you testified that you heard Cox say that they would go to the designated places --

A Yes.

Q -- and wait for how long?

A If they were not served. He knew they were hungry and for them to go to the designated places, and if they were not served, to sit there for one hour.

Q When he told them to go sit at these places, was there any reaction from the crowd then, Mr. Litton?

A No.

Q No reaction?

A No, the matter hadn't come to a conclusion at that particular time. That was a portion of his, I don't know whether you would call it his "talk" or his "sermon."

BY THE COURT:

Q What I want to know is -- you have testified at one point that you thought that after they had, the deputies or the Sheriff had told them that they had had enough, to break it up and move on, that Cox told them not to move. Is that true?

A That's true.

Q When did he say this other part about --

A That was prior to that, Your Honor, possibly some three, four or five minutes prior to that time.

BY MR. PITCHER:

Q In other words, as I understand it, Mr. Litton, his "speech" or "sermon," as you refer to it, was made prior to the Sheriff's remarks to move?

A That is correct.

Q In other words, then, included in that speech or sermon was the statement: "If you are hungry, go to the designated lunch counters and sit for one hour if necessary"?

A That is correct.

Q And, at about that time, was it, that the singing came from the jail?

A That is correct.

Q And that's when this roar took place that you described, I believe, as the loudest thing you had ever heard or something like that?

A That is correct.

Q Is that when the Sheriff then ordered them to disperse?

A That is my recollection of the sequence of events.

Q And then after that is when Cox turned to the crowd himself?

A That is right.

Q And said something but nobody moved?

A That is correct.

CROSS-EXAMINATION

BY MR. JONES:

Q You know, Mr. Litton, I am all mixed up here. I would sure like for you to just go through the sequence of events and tell me just how it happened.

A Well, Johnnie, if you have got the time, I have.

Q Yes, sir, I have.

A As I say, when I first saw the group, they were coming south on St. Louis Street on the west side of the street from North Boulevard down toward America, down toward Louisiana Avenue on the west side of St. Louis Street. They came and it took some, quite a few minutes for them to all get there because they filled in after they got there to utilize all of the available space, the sidewalk being about ten feet wide, and in most instances about three or four feet between the sidewalk and the front of the buildings with the exception of the building that is on the corner of America and St. Louis. Then, when they had all gathered and all been placed all along there, and I do not believe they had blocked that filling station, I think that they started north at the north end of that filling station, and they were solid from then on going north. Then Reverend Cox told them to, that they were going to sing "America." I think they sang "My Country 'Tis of Thee."

Q To whom did he tell that?

A To the group. He turned to them and told them that we will now sing "America." I believe that was the song, and they sang it. He had some people with him who were seemingly song leaders or who had possibly had some experience in singing with them before. They wore little caps, as I recall, and then they went to pledge allegiance to the flag, and I believe there was a flag missing from the flag pole, and I think they pledged allegiance to where the flag would have been or should have been and then they sang a hymn or two and there was a prayer, and Cox made a talk which I would say was either a sermon or a talk and then there was silence and there was some singing from the Courthouse from -- sounded like it emanated from the jail and then the group yelled and screamed loudly and then Sheriff Clemmons told them to disperse, to break it up.

Q Right there at that point did Reverend Cox tell them to go eat at the cafe?

A No, he had told them that prior to that time.

Q Prior to then?

A That's right.

Q And you had silence then, is that right?

A There was a silence in the large group that was on the sidewalk and then they heard the singing from the jail and then they started yelling.

Q Did Reverend Cox do anything or make any other statements after he told them to go eat and utilize the eating facilities in town?

A Well, after that the hollering took place, the singing from the jail and the hollering from the street took place, and then Sheriff Clemmons took the mike and told them to disperse in an orderly fashion or to break it up right now, that --

Q Is that when you heard Reverend Cox use the word "move"?

A Yes, right after Sheriff Clemmons' statement, in a matter of seconds.

Q Now, generally, what do you think about the domonstration? Was it mannerly?

A It was -- you mean was it orderly?

Q Yes.

A I would say that it was an orderly demonstration. It was too large a group, in my opinion, to congregate at that place at that particular time, which is nothing but my opinion.

Q But generally it was orderly?

A Yes, it was orderly.

Q Was there anything of a violent nature said by Reverend Cox in his speech as such?

A No, there was nothing of a violent nature said. As a matter of fact, he said that they were not going to do any physical harm to anyone, that -- as I said a while ago, if they were spit upon, they wouldn't spit back, if tear gas was thrown on us, we won't even move. He said nothing of a violent nature.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q Mr. Litton, in line with what Cox said about these designated places, was it your opinion that what he was instructing them to do was to go take over these lunch counters and continue the demonstration?

A It was certainly -- I don't think you have to get into the opinion stage. He was telling them to go to these designated places, and if they weren't going to be served, to sit down and wait for an hour. There were enough of them to take all the seats.

Q In other words, take all the lunch counters if they didn't wait on them, is that right?

A Take all the seats.

Q Take all the seats.

MR. PITCHER: That's all. Thank you, sir.

MR. JONES: Just a minute.

RECROSS-EXAMINATION

BY MR. JONES:

Q Did he specify which lunch counters?

A I think he said something to this effect: "the designated places and you know which ones they are," I think is the way he put it.

Q Did he say white or colored lunch counters?

A I don't think he used the word "white" or "colored." I don't think he used the word. I don't recall him saying "white" or "colored."

Q Within your opinion, do you think he was referring to the lunch counters that had been customarily used by Negroes?

A No.

Q What lunch counters do you think he was talking about?

A Well, Johnnie, I am pretty sure he was talking about the ones that they weren't usually using, because if it was the ones they were usually using, it wasn't any use giving them any instructions.

Q What, in your opinion, what do you think was the nature of this demonstration?

A What was the nature of it?

Q Yes.

A I am not completely certain I understand your question.

Q Do you think this demonstration was in protest of racial segregation?

A It probably had some indirect bearing to it. As I understand it, it was a protest for the arrest of the colored men who had been arrested previously for picketing. That is what I gathered.

Q Of those who were arrested for picketing, was it your understanding that they were arrested because they were protesting racial segregation?

A I understand they were arrested for picketing without any legal right. I don't know why they were arrested.

Q Was they picketing -- let me ask you this question, Mr. Litton. Is, in your opinion, segregation legal?

A Is segregation legal?

Q Yes.

A Gosh, you got me there. There are a lot smarter people than I am that are still working on it, Johnnie. I would say that the Supreme Court has said that some forms of it are not legal.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q But they haven't said that all forms of it aren't legal, have they, Mr. Litton?

A Not to my knowledge.

Q And as long as you have ever lived in this part of the country we have had laws on the books maintaining segregation in certain places, have we not?

A That is correct.

Q And they are still on the books?

A Yes, sir.

Q And the courts are open to anybody who doesn't believe in them to attack them, isn't that so?

A And they are working on it.

Q Rather than take the law into their own hands, they have the courts open to them, is that correct?

A That is correct.

THE COURT: The Court is going to be the final authority on that.

MR. PITCHER: Yes, sir.

THE COURT: I mean with due respect to you, Mr. Litton.

A I appreciate that, Judge.

Q Mr. Litton, let me ask you one other question. Mr. Jones has been asking you your opinion. In your opinion, I believe you have testified that Cox was instructing these people to go take over these white lunch counters --

MR. JONES: Your Honor, I object.

Q That is what I gather. Did you or did you not hear him say, "Go to the designated places and you know which ones they are"?

A Those are approximately the words he said. They are close. That was the general meaning of them.

Q Did you also hear him say that between here and Southern University there are between nineteen and twenty or twenty-one white lunch counters? Did you hear that?

A Mr. Pitcher, I may have, and I wouldn't want to swear that I heard that. I have that in my mind but I can't swear that I heard him say it.

Q Now, in your opinion who was in complete charge of this demonstration?

A Reverend Cox.

MR. PITCHER: That's all. Thank you, sir, very much.

WITNESS EXCUSED

. . . .

MR. JONES: From this point forward, Your Honor, we are going to ask for a complete sequestration of the witnesses.

(At this time the witnesses were sequestered from the courtroom.)

MR. PITCHER: Mr. Biossat, please.

If Your Honor Please, Mr. Johnson is going to run the machine for me. I don't think we are going to use him as a witness. We don't have to put him out, do we?

THE COURT: If he is not going to testify. Are you going to have him testify?

MR. PITCHER: I am just going to find out right now, Judge, on one point.

THE COURT: Well, you might as well if you are going to use him, Mr. Pitcher, in any way. Maybe it would be better if you put him out of the courtroom. Otherwise he is under the rule like the rest of them.

MR. PITCHER: Thank you, Judge.

Rush Biossat, please.

RUSH BIOSSAT, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q State your full name, please, sir.

A Rush Biossat.

Q Mr. Biossat, how long have you lived in this parish?

A Since 1953.

Q And where are you employed, sir?

A Mathieson Chemical Corporation.

Q Mr. Biossat, did you have occasion to see the demonstration on December 15th that took place in front of the Courthouse?

A I did.

Q In your opinion, how many colored people were involved in this demonstration?

A I would estimate between fifteen hundred and two thousand.

Q Where did they congregate in front of the Courthouse?

A On the west side of St. Louis Street the entire length of the block.

Q You mean is that between America and Louisiana Avenue?

A Yes, sir.

Q On the sest side of St. Louis?

A Yes, sir.

Q Were they congregated in such a manner as making it possible for other people to walk on that side of the street?

A Sir, I don't think it was possible for anybody to get by. A few of them were down off the curb standing in the street, and I noticed that some of them were standing on the steps of the houses across the street. They seemed to be very solid, and some of them were back a little bit into the driveways.

Q Would you say that it was a solid mass of humanity between America and Louisiana Avenue on the west side of St. Louis?

A I would say so.

Q Who was the leader of that demonstration, Mr. Biossat?

A A Reverend Cox.

Q Do you see him sitting in court?

A Yes, I see him at the end of the table there (indicating the accused B. Elton Cox).

Q Now, what caused you to come to the conclusion that this man was the leader of this mob?

A Well, sir, he was in the midst standing out from the curb in the middle of the block and he was leading them in their songs and prayers, and then he was the one that made -- gave them instructions as to what to do and what not to do.

Q What instructions, if any, did you hear him give to them?

A Well --

Q With regard to lunch counters, let's say.

A With regard to the lunch counters, I heard him state to the group that was assembled that they knew there was approximately nineteen, twenty or twenty-one restaurants downtown that served food but would not serve them and that he knew all of them were getting hungry and that he told them to go to those lunch counters and to sit there for at least an hour and ask to be served, and if they wouldn't serve you, to tell them that you were hungry, and it appeared to be in such a manner that he was trying to carry the demonstration further downtown.

Q In other words, take it from the Courthouse to the lunch counters?

A Yes, sir.

Q Did you hear the Sheriff order this crowd to disperse?

A I did.

Q Did they disperse in compliance with his order?

A No, sir.

Q What was necessary to make them disperse?

A Tear gas.

Q Now, Mr. Biossat, did you hear anything unusual coming from the Courthouse any time during this demonstration?

A I heard what I assumed was prisoners up on the top floor of the jail singing a song, and at that time it created a very spontaneous emotional cheering and reaction to the group that was across the street in the demonstration.

Q And was that when the Sheriff advised them that they had worn out their welcome, so to speak?

A Well, he advised them that they had been allowed to have their demonstration and that he requested that they please disperse immediately.

Q And did they so disperse?

A They did not. Reverend Cox throwed his arms up and says, "Don't move," and then shortly after that tear gas was let loose to disperse the crowd.

Q You yourself heard Cox turn to the crowd and raise his arms saying, "Don't move"?

A I did and I also saw that after the tear gas was let loose, he was still pleading with them while they were trying to rush out through the driveways behind them and everything for I can't estimate how long, but for a period of time, and then finally he joined them.

MR. PITCHER: That's all.

CROSS-EXAMINATION

BY MR. JONES:

Q Your name is Mr. Biossat?

A Yes.

Q How do you spell that?

A B-i-o-s-s-a-t.

Q Mr. Biossat, did you hear Cox say "Don't move"?

A Yes, I did.

Q Do you know whether or not the Sheriff had allowed them to assemble there?

A No, I don't know whether he had allowed them to assemble there or not. I was downtown on business.

Q Did you not testify a minute ago that the Sheriff said, "I have allowed you to --"

A At the time the Sheriff told them that they had been allowed to demonstrate and now requested that they peacefully disperse. I did not know prior to that time that they had even been given any permission to assemble or anything.

Q But the Sheriff did make the statement that he had allowed them to demonstrate, is that right, sir?

A Well, I cannot recall his exact words. I would -- I am lead to believe that he was trying to deal with some people that were emotionally upset and --

Q We are not asking you that. I am asking you one question.

MR. PITCHER: If Your Honor Please, I submit that he is entitled to answer the question.

MR. JONES: The question was whether or not he heard the Sheriff make the statement that he had allowed them to demonstrate there. That requires only one thing.

A Well, if --

THE COURT: You can answer that directly and then explain it anyway you please.

A If I am allowed to search my memory, I cannot say that he stated that he has allowed them to, but that he said that they had had their demonstration and now they are to peacefully disperse. I do know that he stated that they have had their demonstration and requested that they peacefully disperse.

Q Now, you heard Reverend Cox say that there were from nineteen to twenty-one eating places downtown that didn't allow them to eat or didn't serve them? Did you hear that, sir?

A I heard Reverend Cox make reference to nineteen to twenty-one lunch counters downtown, "You people know who they are, where they are, and go and sit and stay there for one hour. Tell them you are hungry and ask to be served, and if they don't serve you, stay there for one hour."

Q Did you not testify on direct examination that Reverend Cox said, "There are nineteen or twenty-one eating places that will not serve you"? Did you not testify to that effect just a minute ago?

A Could you read back my words to me, please ma'am?

THE COURT: Didn't I ask you --

MR. JONES: She doesn't have to read --

A Your Honor, I don't know if I said it word for word as he is implying.

THE COURT: It was what you stated in effect.

A In effect he gave them instructions to go downtown and eat at nineteen to twenty-one lunch counters of which they were aware who they were and where they were and to go and sit and stay for one hour.

Q Did he make a statement to the effect that there were ninetten to twenty-one places that would not serve them and you know who they are? Did you not testify to that effect?

A It might be possible that I used that terminology and that is why I asked for the record to be reread. As far as actually hearing him state that they would refuse service to them, I don't know that he said it in those words, but he had reference to the fact that they knew where the lunch counters were and to go in and demand to be served to carry -- in other words, to carry the demonstration downtown to the lunch counters.

Q Approximately how long after Reverend Cox made that statement referring to the lunch counters and to go eat if you are hungry was the tear gas bomb thrown?

A I didn't run a stop clock on it or anything but it was a very short while after that.

Q Would you say a half a second, two seconds, three seconds, five seconds?

A Oh, no, no, they were given from the time Sheriff Clemmons gave them -- asked them to disperse immediately, they were allowed enough time to start moving which they did not do.

Q Now, --

BY THE COURT:

Q Did you hear the defendant make any statements after the Sheriff had asked them to move?

A Yes, he threw his hands up and said, "Don't move, don't move," and talked to the group all along the block.

BY MR. JONES:

Q Now, in respect to the time the Sheriff told them to move or ordered them to move on, when did Reverend Cox tell them to go to the lunch counter and sit down?

A I don't recall the exact order of sequences as to -- exactly how everything in the exact order that they happened in.

Q You don't know which came first?

A Well, if I sat down and gave it serious enough thought and tried to analyze it, possibly I could give you the exact detail of how it came, but as far as word for word, just like I am sure it would be hard for you right now to repeat word for word the testimony that I have given.

Q Let's start tracing them back backwards since the last thing happened as near as you can remember. Tear gas was thrown last, is that right, sir?

A That's right.

Q Now, from the time that the tear gas was thrown going backwards, now, what happened first, whether or not Reverend Cox --

A Reverend Cox told them not to move.

Q Not to move. Then after he told them not to move, then what came before Reverend Cox told them not to move?

A Sheriff Clemmons asked them to disperse.

Q And after the Sheriff told them not to -- to disperse, what came just before that?

A Well, I don't recall if it was the singing from the jail or if that was when he gave them the instructions about the lunch counter.

Q When did Reverend Cox tell them to go to the lunch counter and eat?

A It was right toward the end of the demonstration.

Q Right toward the end. Now, that is what I want to know. Where did that fit in in this whole thing?

A My interpretation would be that he was trying to get them to carry the demonstration downtown and further the demonstration instead of --

Q Where did that fit in the pattern from the time that he was told to move by the Sheriff and the tear gas was thrown? That is what I want to know.

MR. PITCHER: If Your Honor Please, I submit that counsel is confusing the witness. I think he has given a beautiful demonstration of what happened in reverse order, and now he is trying to get him to pinpoint when Cox said to go eat at these lunch counters and when the shouting from the jail came, and he just testified, "I don't know which came before the other, the statement by Cox to go eat at these lunch counters or the singing from the jail," but I submit that counsel has confused him now by the way he is asking these questions. In the first place, he has said, "Don't give me the sequence of events, give them to me in reverse," and he did that.

THE COURT: Just answer to the best of your ability when in that sequence the defendant asked them to go downtown and eat at these lunch counters.

BY THE COURT:

Q Can you do that?

A No, sir, I cannot.

Q Do you know when it was?

A I don't know the exact sequence that it was in, and the reason for that --

Q You don't know whether it was before the singing or after the singing?

A No, sir, that's right.

Q But you know it was around in there, either before or after?

A Yes, sir.

BY MR. JONES:

Q Mr. Biossat, where were you standing?

A I was standing on the front steps of the Courthouse facing St. Louis Street.

Q Were you near the Sheriff?

A The Sheriff was down by the sidewalk down by the curb. I was up on the steps.

Q Did you notice any white people congregated on this side of the street?

A They had a crowd of white people in front of the Courthouse.

Q Approximately how many?

A Oh, I would say in the neighborhood of two to three hundred. It was at the noon hour. More accumulated as the thing progressed further.

Q Now, was that two or three hundred that congregated, were they nearer the Courthouse than those who were demonstrating with Mr. Cox's group?

A Quite a few of them were people that worked in the Courthouse, I assume, so they were on the front steps of the Courthouse which would naturally put them on the steps of the Courthouse, the lawn, the sidewalk and they were scattered and they were not accumulated in any one mass bunch.

Q Would you say this was an orderly demonstration which Reverend Cox had?

A I would say that, in my opinion, if that is what you are asking for, it started out to be an orderly demonstration, but I think that emotions got upset and at that time they got a feeling of disturbance in the air and it was hard to say what was going to happen next.

Q Would you say that the Reverend Cox said anything in his speech of a violent nature or character?

A Well, he didn't say anything of a violent nature, but he did make some remarks that caused agitation.

Q And what were those remarks, sir?

A Well, some of the remarks that got some of the people agitated or more or less got themselves emotionally upset is his statement about inter-marrying the two races and the chant that they were giving, "black and white together, there will be no more line there," and tension started to rise.

Q When you say "chant," you mean the song that they were singing?

A If it was a song, if you want to call it that. I never heard the song before.

Q And this song which they were singing, what was the nature of those songs?

A "Black and white together, there will be no more line of distinction between the two," and that is when he made the remark that they were to see that the races would intermarry.

Q And within your opinion that was agitation?

A Well, in my opinion at that time Reverend Cox was emotionally getting upset himself. He was not talking in the same tone at which he started the demonstration, and then the cheering came, umbrellas started flying up in the air and waving, and people were getting tense. I noticed tenseness on their part as well as tenseness on the part of the people on this side of the Courthouse.

Q When you say "this side," that was the whites that were congregated on the Courthouse grounds?

A Well, I wouldn't say they were congregated in a group. They were not congregated in a group. They were people that were coming out of the Courthouse, employees coming out of the Courthouse and naturally anyone coming out could not help but see the demonstration that was going on in front on St. Louis Street.

Q Within your opinion, what do you think was the nature of this demonstration?

A Well, do you want me to draw an opinion from what I read in the newspapers?

Q From whatever you want.

A In an opinion, the nature of the demonstration was -- they were demonstrating to begin with of -- I don't know how many. Possibly twenty-three Negroes had been arrested for sit-ins or something of that nature. As this demonstration went on, the emotions started getting -- working up, building up, and I know that he at the end was not in the same emotional character that he was in at the beginning of the demonstration.

Q Did you hear Reverend Cox make the statement that if you were spat on, do not spit back, if you are hit, don't hit back?

A He said it in a very emotional way and which possibly he had reference to something else that had happened that I am not aware of, but he did say that if you were spat on, do not spit back.

Q He did make that statement?

A I heard him make that statement.

Q Do you consider anything of a violent nature in that statement?

A Well, you can have, in my opinion, you can have -- you can say things and it is not what you say but it is the way that you say it. You can say something that may mean violence, get emotionally upset. It is possible. I don't know what was in his mind when he said it.

Q Now, when he told them to go down to these lunch counters and eat, what lunch counters do you think he was talking about?

A I don't have the slightest idea.

Q Do you think he was talking about the lunch counters that had been previously reserved for Negroes?

A I would assume --

Q That he had reference to those lunch counters?

A I would assume that.

Q You wouldn't think that he was talking about integrating the lunch counters down there that had been previously used for whites, you wouldn't think that, would you, sir?

A Now, would you repeat yourself?

Q At the time he told them to go down and use the lunch counters and to eat if you are hungry and to sit until you are served, do you think he was talking about integrating those lunch counters, using those lunch counters that had been previously used by whites by custom and by practice?

A In my opinion, he was trying to carry the demonstration down there and force them to serve them.

Q At white restaurants?

THE COURT: Just a minute. May I interrupt you, counsel? But what difference does it make or how would he be able to know what he meant by what he said there?

MR. JONES: I withdraw the question, Your Honor.

Q This crowd that was on the east side of St. Louis Street, was that a violent crowd?

A No, I wouldn't say they were violent.

Q Was it --

A They came there, merely stopped as I would presume being let off at noon for their lunch hours, and they saw what was going on, and I do know that one lady made a remark that she wanted to get across the street to get her automobile, but she wouldn't dare go over in that section. She was fearful to go through that crowd.

Q How did you manage to be there?

A Beg pardon?

Q How did you manage to be there, for what reason were you there?

A Well, I had my own personal business -- I have business in the Courthouse.

Q You were just here for your own personal business at that time?

A I don't know that it has any bearing on the case as to what I saw, but I was here. If you want to know --

Q You just happened up there --

A No, I was here on a very specific purpose.

Q You wasn't here for the purpose of being there to testify in this case, were you?

A No, I was not -- I didn't know anything that was coming up. I was here on a personal business.

MR. PITCHER: I think that's all, Mr. Biossat. Thank you very much.

WITNESS EXCUSED

. . . .

MR. PITCHER: Call Mr. Bob Durham.

ROBERT L. DURHAM, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q State your name, please, sir.

A Robert L. Durham.

Q Mr. Durham, where are you employed, sir.

A At WBRZ-TV.

Q In what capacity?

A I am the chief photographer.

Q Now, Mr. Durham, how long have you been in photographic work?

A I have earned a living at it for twenty years.

Q Are you the -- would you class yourself as the chief news photographer for WBRZ?

A Yes, sir.

Q Do you develop your own pictures?

A Yes, sir.

Q Do you have a picture with you today that was made on December 15th of the demonstrations that took place in East Baton Rouge Parish?

A I have a film clip, yes, sir.

Q Where was that film clim made?

A It was made about the downtown area, some across the street from the Courthouse, some on Third Street, some on some of the interlacing streets downtown.

Q Does it show the demonstration in front of the Courthouse?

A Yes, sir.

Q What training, experience and education have you had in photographic work, Mr. Durham?

A I was photographic officer for the Air Force in World War II. I served on two general staffs as chief of photography, and I worked for the "State Times" and "Morning Advocate" for approximately eight years as their chief photographer, and I have been employed at WBRZ-TV for seven years as the chief photographer.

MR. PITCHER: I submit that Mr. Durham is qualified in photography, If Your Honor Please, and submit him for cross-examination.

CROSS-EXAMINATION
(ON QUALIFICATIONS)

BY MR. JONES:

Q What is a film clip, Mr. Durham?

A When we refer to a film clip, counsellor, we actually refer to a certain footage of motion picture film.

Q And this motion picture film that you are going to show here today, has it been edited in any way?

A It was edited in the respect that the scenes were switched. They are not in the sequence that they were shot. They were taken and some scenes reversed and placed further forward in the film, and some that were at the beginning were placed toward the end to sort of keep a semblance of order, but that's all the editing that we have done.

Q Is any part of this film missing?

A That I can't really say because I processed the film and I didn't get a chance to time it. However, I think that it's all here. I didn't get a chance to time the film at the time that I made it, but I think they are here, all the footage. I did send some of the footage to New Orleans to Station WWL, but that film was returned to me, and that particular portion is in this film clip.

Q But it is not in the sequence in which the demonstration took place?

A No.

Q Is that right?

A No.

MR. PITCHER: If Your Honor Please, I only submitted him for cross-examination on his qualifications, but I haven't objected.

MR. JONES: Your Honor, it would be rather late to ask those questions after the film is shown.

THE COURT: I will let you

ask them, but Mr. Pitcher is correct. It probably would be proper for you to ask him the questions when they get ready to offer the movies, rather than on his qualifications. Do you have any further cross-examination on his qualifications?

MR. JONES: No, sir.

THE COURT: All right then I am going to admit him as an expert and qualified to take pictures and now in regard to the film, Mr. Jones, I will reserve for you the right to examine him anyway you want to about that before they are shown.

DIRECT EXAMINATION
(CONTINUED)

BY MR. PITCHER:

Q With respect to the particular film clip that you have with you today, does it depict truly the events that happened in East Baton Rouge on December 15th as you took the pictures?

A Insofar as the film here is concerned, yes.

Q Are there any alterations or superimpositions or doctoring of that film in anyway?

A No, sir.

Q That is a true and correct photographic account --

A Yes, sir.

Q -- of what you saw and what you took on December 15th, 1961, in front of the Courthouse and surrounding vicinity, is that true?

A Yes, sir.

Q There has been no doctoring of this particular film? There may be some parts missing that you didn't feel were worth printing, but as a news item, this represents the entire photograph as you took it?

A Yes, sir.

Q And you have had that photograph in your possession, I believe you said since the time you took it except you sent some of it to New Orleans and it was returned?

A That is correct.

Q And was that film doctored in New Orleans? Have you run that film since then to see and be sure it is the same film?

A Yes, sir, it is the same film. It hasn't been doctored.

MR. PITCHER: I submit, If

Your Honor Please, that we offer the film at this time as documentary evidence of what occurred on this date.

THE COURT: All right, now, Mr. Jones.

MR. JONES: No questions.

THE COURT: All right, run the film.

A Do you want me to say what scenes --

Q Yes, I want you to narrate as we run this film. Turn it on, please.

(At this time the following testimony was adduced from the witness as the moving picture film was being run:)

A This scene, of course, was made before the demonstration took place. I arrived at the Courthouse approximately thirty minutes before the group from Southern University arrived, and this is a shot that I made across Third Street showing the mall, the fire truck and the Fire Department was present to assist. More shots of the officers and the line up of officers who were on duty. This film that we are showing now was merely establishing the scene of what we thought was to happen.

Q Who is the man with his back to the camera at this time?

A This man was identified to me as Reverend Elton Cox.

Q Can you identify any of the other parties in the picture?

A I see Sergeant Deffez, Chief White.

MR. PITCHER: Run the movie back a minute, please.

(Mr. Johnson complies.)

A Sergeant Deffez on the left, Chief White next to him, Captain Font, Inspector Trigg and Reverend Cox.

Q Did you see Jim Erwin and Bill Daniels in that picture?

A I am sorry. I can't see it at a very good angle here. You will have to run it again for me. (The film was rerun for the witness.) Yes, I see Jim Erwin to the far, far left of the scene with just his face, profile.

Q All right. (The film was rerun again.) Do you see Daniels now?

A Yes, I see Bill Daniels. (The film was then run forward.) Jim Kling climbing the stairs.

Q And who is that man?

A That is Reverend Cox, but I don't know the other man. Captain Font.

Q Is this Cox directing the crowd?

A That is Reverend Cox walking up and down directing the group.

Q Is that the picture depicting the crowd on the west side of St. Louis Street on December 15th?

A That's right. Now, they are displaying signs.

Q Is that Cox with the paper in his hand?

A With the paper in his hand. I am not sure what was written on it. These are some of the students who took part in the demonstration, some of the people.

Q Do you notice Mr. Ossie Brown's law office sign in the background?

A Yes, sir. This is a time when they were having silent prayer.

Q Is that a good shot of the crowd, Mr. Durham?

A That shows the crowd very well, I think.

Q Standing completely over the sidewalk and in the street?

A That's right.

Q Is this Cox making the speech?

A That's right, he was talking to the group. This was a fast pan of the crowd. The only way we could actually show a semblance of the size of the group was to do it rapidly, and that is why you have a little jerk in the film, because of the fast pan.

Q How many people would you estimate were in that crowd, Mr. Durham?

A I would say anywhere between fifteen hundred and two thousand. It was a rainy day that day.

Q Who is this making this speech at this point?

A That is Reverend Cox. At that time some of the jail population had begun to sing, and this group began to clap and yell and sort of lend encouragement to them. This is Sheriff Bryan Clemmons just before he spoke to the group. Of course, that is the tear gas. More of it. The crowd dispersing. This scene was taken on Lafayette Street near the proximity of the State Times Building. Now, this was a group meeting on Third Street between Laurel and Florida.

BY THE COURT:

Q When was that taken?

A That was taken immediately after they were dispersed from the Courthouse, Your Honor, and Reverend Cox was talking to what seemed to be several of his leaders. These are more shots in the vicinity of the Courthouse.

BY MR. PITCHER:

Q Where was that shot taken, Mr. Durham?

A I am sorry. I am looking at it at an angle. I was not able to recognize the scene. I assumed it was on Third Street or in the vicinity of Third Street. The police officer with the police dog. This is a Third Street scene.

Q Was that sidewalk blocked, Mr. Durham?

A Yes, sir, that sidewalk was blocked. Many people had to spill out into the street. It was raining that day. Sometimes they were by pairs, sometimes three or four abreast. I don't know his name, but he was one of the leaders of the group.

Q Do you know a man by the name of DeArmand Bailey?

A I am sorry. I don't know him by sight. This is another shot of Reverend Cox and what I assume were his lieutenants. There was continual marching, and the only time they stopped was when there was a traffic signal against them. This was on Main Street -- no, I am sorry. That was on Third.

Q Do you recall now --

BY THE COURT:

Q All these pictures were away from the Courthouse?

A Yes, sir, those pictures were on Third Street in the downtown area, Your Honor.

Q Was that before they got to the Courthouse or afterwards?

A That was afterwards, sir. This was another Third Street scene where I think the Mayor had stopped.

BY MR. PITCHER:

Q Now, this picture shows a white boy who was arrested in that crowd?

A That's right. He was the only man I saw taken away by the police.

Q You saw no colored people arrested on this occasion?

A No. This man was taken and lead off in handcuffs.

Q Now, what is the sequence on this picture?

A At this time the people were beginning to congregate at the Capitol on their way home.

Q Before the demonstration?

A That was after the demonstration.

Q After the demonstration?

A They were getting ready to leave. They were waiting for vehicles, buses, or what-not to go home. Fire Department washing the streets down near the Courthouse. That's the end of it.

(At this time the moving picture film was completed.)

Q Now, Mr. Durham, the picture that you have just seen was the picture you described, I believe, on your opening testimony, is that correct?

A That is correct.

Q And it is your testimony that this is an accurate photographic account of the things that you saw on that day printed by you, is that correct?

A Yes, sir.

MR. PITCHER: I offer, produce and file in evidence the --

Q You don't mind if I take it away from you, do you?

A No, sir.

MR. PITCHER: I offer these in evidence, If Your Honor Please, and ask that it be marked State-1.

MR. JONES: We have no objection, Your Honor. We would like that portion of the pictures shown in front of the Courthouse. We want to show that --

THE COURT: Do you want to tender it for the purpose of cross-examination on the film or do you want to wait until you finish all that you --

MR. PITCHER: I have offered the film already. It's in evidence without objection, I suppose, Your Honor. I mean I think it has been properly identified.

THE COURT: All right. I want to know, though, do you want to finish with this and tender him completely for cross-examination or do you have any further questions of your witness?

MR. PITCHER: I think not.

Q Is there anything else that you can tell me about this thing, Mr. Durham, that I haven't asked you about already with reference to the activities of the crowd.

A Except that --

Q Let me ask you specific questions.

MR. PITCHER: Thank you, Judge.

Q Did you hear the Sheriff order this crowd to disperse?

A Yes, sir.

Q And what did Cox say immediately after the Sheriff had ordered them to disperse?

A Mr. Pitcher, I didn't hear Reverend Cox say anything. However, I do remember him raising his hands up.

Q Facing the crowd?

A I don't know whether he was quieting the crowd or what the situation was.

Q You heard the Sheriff order them to disperse?

A Yes, sir.

Q And did they disperse?

A No, sir.

Q How long have you -- you say you have worked in the photographic business for some twenty years?

A Yes, sir.

Q And how long have you been a resident of this parish?

A I was at the University from 1940 to 1942 and went in the service and was back in 1946 and have been back in Baton Rouge ever since.

Q Have you ever seen any prior demonstrations similar to the one you saw that day in this parish, Mr. Durham?

A No, sir.

Q In your opinion, was that thing getting out of hand at the time the tear gas was thrown?

A Yes, sir.

Q I believe the pictures depicted a group of white people on the east side of the street. Did you hear any remarks made in that crowd that might have lead you to believe that there would be some violence about to occur?

A Well, I did hear an occasional jeering from some few white people who were present, which could have possibly caused some friction.

Q Did you hear the speech that Cox made out there?

A Just spasmodically. I was busy taking pictures and I could only catch a word or two.

Q Did you hear him make any reference to intermarriage?

A No, sir, I didn't.

Q You did not. Did you hear him make any reference to if the people were hungry that there were lunch counters and they knew which ones to go to? What did he say about that?

A He said -- it probably won't be his exact words, but in effect he said, I think he looked at his watch, and he said, "It is well past the noon hour and I am sure many of you are hungry, so when you go away from here, go to the appointed restaurants and order. Put your money --if they take your money, sit and eat your meal. If they don't, sit there. If they won't serve you, sit for an hour." That was in effect what he said.

BY THE COURT:

Q Did you hear any mention with regard to any persons who had been incarcerated in the East Baton Rouge Parish Jail by the defendant?

A No, Your Honor --

Q Did you hear any mention of any persons who were in jail?

A No, Your Honor, I didn't hear any. I did hear -- Your Honor, I did hear him say that -- tell the group that he was leading, that they were there to lend support to their friends who had been incarcerated.

Q And did you hear any other remarks of any nature whatsoever to their being in jail by him or any others in the group?

A No, Your Honor, I didn't.

MR. PITCHER: I tender the witness.

THE COURT: Do you want to run the film now?

MR. JONES: Yes, sir.

(At this time the moving picture was run again.)

CROSS-EXAMINATION

BY MR. JONES:

Q This scene right here, is this, do you know whether or not this was before they assembled on the west side of St. Louis Street or after?

A This was after they assembled.

Q Do you know whether or not at that -- was this before Reverend Cox started talking?

A I can't remember, counsel, whether it was before he started talking to the group. However, it was after the group had assembled across the street from the Courthouse because I didn't see Reverend Cox until the group arrived.

Q Were you near there? Did you hear anything that went on at that gathering?

A That was taken with that two-inch lens, and I was too far away to hear the conversation.

Q Did you hear Reverend Cox get permission from the officials there to assemble?

A No, I did not.

Q Identify those officials in that group again.

A Mr. Deffez on the left, Chief White, Captain Font, Inspector Trigg, Bill -- from your office -- Daniels from the District Attorney's office, Jim Erwin, and those are the only ones that I can readily see. Another man from the District Attorney's office was Jack Cullen. Sergeant McCormick from the Sheriff's office.

Q Do you know whether or not Reverend Cox was arrested?

A No, I don't. I assume that he wasn't under arrest at that point for the simple reason that he conducted further activity along the line of demonstrators afterwards, after these films were made.

Q Was he arrested after he got up on Third Street?

A If he was under arrest, he wasn't detained.

Q Was anything disorderly going on at that point?

A The group was very quiet at that particular time. When Reverend Cox was talking to the police officials, there was an obvious quiet over the group.

Q You notice they are marching in two's and three's there, is that right, sir? They continued to move?

A They did until they got to a traffic signal and then they began to pile up as people are want to do. Of course, in front of the Courthouse it was a different situation. They were not an orderly --

Q Is that --

MR. PITCHER: Say that again.

A In front of the Courthouse they were not an orderly group, they were just jammed in wherever space was available.

Q Do you notice, right here, do you notice someone walking behind -- a white person walking behind the crowd there?

A That was probably -- yes, I saw that man. But --

Q Was that street blocked back there where there could be no passage?

A I think the sidewalk was completely covered. This man was probably walking on the ground on somebody's property, not on the sidewalk, because I think the sidewalk was pretty well covered.

Q You noticed him walking back there?

A Yes, I saw him.

Q Do you know of your own knowledge that he wasn't using the sidewalk?

A I can't -- of course, I don't because I couldn't see his feet, but I do know that the sidewalk was completely covered and that there is room to walk on the lawns of the buildings across the street.

Q Did you try to use the sidewalk yourself?

A I stayed in the middle of the street. The street was blocked off, and I had a better vantage point for making films there.

Q This crowd is pretty orderly right here, is it?

A They were singing rather loudly.

Q Do you recall what they were singing?

A I recall -- I think they started by singing "America" and they sang what was identified to me as the CORE anthem which I had never heard before.

Q You have never been a member of Core?

A Yes, I have been in Criminal Court but not -- this is the first time on this particular type of case.

Q Now, they are not down in the streets where the automobiles use it--

A Some of them are. Some of them are off the curb.

Q Does this picture show that?

A This picture -- that is a closeup and you can't see it, but if you were back off, on the long shots you can see some of them are off the curb on the street.

Q Is this it right here?

A There are some of them off the curb.

Q Is this about the way they blocked the street, the main traveled portion for automobiles?

A Well, the street was completely blocked. I mean with the police officials standing guard on one side and the demonstrators on the other side. There was actually very little space for you to allow traffic through. This was the situation which I assume the traffic officials of our city had under control.

Q Do you notice some more people moving in the back, some more people moving and walking in the back?

A Some of those people are walking --

Q Do you notice that the greatest portion in the street are on the east side rather than on the side of the demonstrators?

A What do you mean?

Q Who was over here on the east side --

A That was a small group of people, not nearly as many --

Q I mean in the main traveled portion --

MR. PITCHER: Your Honor, I ask you to instruct counsel to let the witness answer the question.

THE COURT: All right, counsel. Ask the question and after that he can answer it.

A Those were police officials. The only other people in the street besides police officials were newsmen like myself.

Q What is taking place right now?

A Reverend Cox was addressing the group. Everything was rather quiet at that time.

Q Reverend Cox hadn't yet been arrested?

A Not to my knowledge. I don't know when Reverend Cox was arrested.

Q Were any of them arrested during, to your knowledge --

A To my knowledge, no.

Q Everything was quiet and peaceful around through there?

A When you say "quiet and peaceful," I would have to qualify that.

Q Was everything orderly?

A Everything was orderly, but I wouldn't say quiet and peaceful.

Q Are those white people standing there in the back part of the demonstration?

A Those people are on the porches of some of the law offices and some of the other offices on the other side of the street, and they were merely there for curiosity's sake, I assume.

Q Did they appear to be afraid of anything standing there, to you?

A I don't think so. They are in their offices. I wouldn't assume they would be afraid.

Q I am talking about those on the porch sitting back there.

A That's what I mean. Those people worked in the offices, I assume, and certainly they were at home.

Q It was still orderly, was it not, sir, at this point?

A At many points it was orderly.

Q Now, those white people right back there, they seem to be at ease.

A I was at ease, too.

Q You were at ease, too?

A Yes, I was at ease.

Q Now, right here, would you say they were orderly or doing anything disorderly?

A They were very disorderly at that point. This sounded like an LSU-Ole' Miss. football game.

Q Clapping their hands --

A There was yelling and clapping and the jail population was responding very, very loudly.

Q But they were merely clapping their hands and waving?

A And yelling.

Q Do you know what they were yelling?

A No, it was just a jumbled roar like people cheering at a football game.

Q Was that the time they started moving out, is that right?

A That's when they were moving out.

Q Would you say they were orderly now?

A They were very disorderly then.

Q They are not orderly now?

A No.

Q What is the reason for the disorderly now?

A I assume that like me they were trying to get away from the tear gas.

Q They were running from tear gas. That is what is responsible for the disorderly, is that right?

A I don't know if the tear gas was responsible for the disorderliness, but it was responsible for causing them to break up the demonstration.

Q They broke up disorderly, is that right, sir?

A Yes, they certainly did.

Q When they moved in, when they came in --

A They marched in.

Q They marched in orderly?

A Orderly.

Q They were orderly up until the point of throwing the tear gas, is that right?

A Yes -- well, no I am going to take that back because they were not orderly -- (There was noise in the courtroom)

THE COURT: If I have any noise out among the spectators again, I am going to put you all out of here.

A Excuse me, Your Honor.

THE COURT: -- if I hear any more noise out there, believe me. Be quiet.

A They were orderly at times, and at times they were disorderly.

Q The only time they were assembled there that you considered them not being disorderly was at the times when they were clapping their hands and waving --

A When they were in silent prayer or when they were listening to a short talk by Reverend Cox which he made to them, then there was quiet. I don't know if you would call singing quiet or disorderly or not orderly. I would say that the tone of voice was loud enough to say it was disorderly. If I lived in the area and had someone sick in my home, I would have been very, very offended by it, so I don't know what you call orderly.

Q If you say they were praying, you say that was disorderly?

A Well, they were quiet when they were in silent prayer. They were quiet.

Q What was this dog doing? Was it causing disorderly, disorderliness?

A The dog, I assume, was being used to control the crowd.

Q The tear gas and the dog really broke up all of it, didn't they?

A I wouldn't say that. It broke up the demonstration.

Q Now, Third Street was malled off. All of Third Street is for passageway, is it not, from sidewalk to sidewalk, from street traffic?

A During the Christmas holidays it was.

Q For pedestrians?

A Yes.

Q No automobiles used Third Street at all, is that right?

A They use it now.

Q I mean at the time of the demonstration.

A No, it was roped off as a mall.

Q It was roped off as a mall. Then the entire Third Street was for pedestrians, is that right, sir?

A They could use it.

Q No automobile could use it?

A No automobile could, it is true.

Q As they are here on Third Street, the sidewalk of Third Street, there were still places for pedestrians, was there not?

A In the middle of the street, but it was raining that day and nobody could use the canopies.

Q I mean the whole entire street was for pedestrians at that time, was it not?

A I assume they could use it. They weren't forbidden to use it.

Q Right here is Third Street, is it not?

A Yes.

Q Is that street blocked off now so no one could use it?

A The street isn't but the walk is pretty well covered.

Q They are moving constantly, are they not?

A They moved until they got to a traffic signal and when they stopped -- when they stopped at a traffic signal, you have the normal rush of people --

Q Aren't they stopped there now for the traffic to pass?

A Yes.

MR. JONES: Run that scene back for me, please.

(Counsel's request is complied with.)

Q Right there -- aren't they waiting ordinarily as people would wait at Christmas time on the street --

A Yes, there were police officers there to see that they stopped, too.

Q They were obeying the police officers, is that right, sir? They were responding in obedience to the police officers, is that your testimony?

A While they were crossing in the traffic lanes, yes, I think that if they hadn't, somebody might have gotten hurt, by an automobile I mean.

Q Is it your testimony then that they were responding in obedience to the police officers?

A Yes, I would say so.

Q You wouldn't say the street is blocked here, would you say, sir?

A No, this is not downtown. This is when the man was being led off to the police station, and he was away from the crowd.

Q Was he part of the demonstration, sir?

A He was not part of the demonstration. I can't say what he was doing because the only thing I saw was the police officers leading him off in handcuffs, and there was the case later in the papers, and the only thing that I know about it is what I read in the newspapers.

Q He was a member of the white race, though, was he not?

A He certainly was, and he was arrested, I understand, for causing a disturbance.

Q Now, none of the disturbance of the Negro race were arrested at that time?

A To my knowledge, no, but as I say, I don't know.

Q And this white man was arrested because he was causing a disburbance, is that right, sir?

A That is what I read in the newspapers the following day.

Q Presumably everybody who was causing a disturbance would have been arrested there, is that right, sir?

A I don't know. That would be a presumption on my part.

I can't say.

Q But this white man who was causing a disturbance was arrested?

A Yes, he was arrested. I don't know --

Q No Negro was arrested?

A To my knowledge, no, not at that particular time.

(At this point the moving picture film was completed.)

THE COURT: Do you want any more of the film?

MR. JONES: No, sir. That's all.

MR. PITCHER: I offer this and ask, If Your Honor Please, that it be marked State-1. I have no further questions, Judge. Thank you Mr. Durham, very much.

WITNESS EXCUSED

. . . .

MR. PITCHER: Call Mr. Jim Erwin.

JAMES E. ERWIN, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q State your full name, please, sir.

A James E. Erwin.

Q Where are you employed?

A I am news director of Radio Station WIBR.

Q How long have you been a resident of East Baton Rouge Parish?

A Three years.

Q Are you connected with the law enforcement officials -- officers in any capacity in this parish?

A No, sir.

Q Did you have an occasion to cover a demonstration that took place on December 15th, 1961, near the Courthouse building in the Parish of East Baton Rouge?

A Yes.

Q Tell the Court in your own words, Mr. Erwin, as best you can just what happened on this particular day, how you came to find out about this demonstration and just what you did and what you saw.

A Well, I learned from another reporter that a demonstration was planned, and I went first to the State Capitol Building, the present State Capitol Building, where I understood the demonstration was to start. I learned then that it was not to start there, returned to the Courthouse, and at that time I could look down the street -- is this America Street here directly across the street from the division between the City and the Parish building? I could look down America Street toward the Old State Capitol Building and there I saw a large group of young colored people marching around the Capitol with the impression of forming a crowd, forming a group. I went down to the Old Capitol building, and they were marching clockwise around the Capitol Building. They went from the Old Capitol Building on North Boulevard up to St. Louis Street. At that point there was a group of additional young colored people coming across North Boulevard from the Third Street mall area and joining the crowd. They moved up St. Louis Street -- actually the intersection of America and St. Louis. At that point the Chief of Police Wingate White stepped forward and asked who was in charge of the demonstration or in charge of the crowd or something of that sort. He was met in the middle of the street by a man who was later identified to me as Reverend B. Elton Cox. The Chief of Police said, "What are you up to?" And Cox said, "We are here to demonstrate the cause of or in favor of or in behalf of," or something of that sort, "of the people who you have in jail who were arrested for picketing."

Q Let me ask you this. In other words, he stated to the Chief of Police in your presence that the purpose of the demonstration was to protest the arrest of twenty-three people the previous day, is that correct?

A I didn't hear the number "twenty-three," but --

Q Well, arrests made on the previous date?

A That's right.

Q And were those people at that time in the East Baton Rouge Parish Jail?

A Yes.

Q And you heard Cox say that the purpose of this demonstration was to protest those arrests?

A Yes, that's right.

Q Go right ahead.

A The Chief of Police then said, "What's the form of the demonstration," or something of that sort, "What do you have planned," and Cox told him that we are going to sing some songs, patriotic songs, say some prayers and that was it. They mentioned a silent prayer, by the way. And Cox started to move away and Lieutenant -- Captain Leslie Font who is in charge of the detective bureau of the City Police went to the Chief and said, "Do you think we ought to find out how long this is going to last?" So the

Chief moved toward Cox and Cox moved back toward him, and the Chief said, "How long will this take you?" Cox's answer was, "Seven minutes." The Chief said, "Okay, we will give you seven minutes, and that's all." And then --

Q Wait a minute. Where did this conversation take place?

A In the street, in St. Louis Street, very near the intersection with America, and this was in the street.

Q Was this before or after this two thousand, fifteen hundred or two thousand people had gathered across the street?

A They were forming. They were forming then.

Q Reverend Cox was not in the first of the group. He was near the front of the group when I saw him.

BY THE COURT:

Q Who was he talking to?

A He was talking to Chief of Police White.

Q And what was that about the time again?

A The time was shortly after twelve o'clock.

Q No, I am talking about some time was mentioned.

A Oh, the Chief said at the suggestion of Captain Font, asked him what the time limit would be on the meeting and Cox said, "It will take us seven minutes," and the Chief said, "All right, you have got seven minutes but no more," words to that effect. Cox --

and the group kept on moving up. Cox stayed in the street. The group that was coming primarily from the Old State Capitol or from North Boulevard at least, some of them from across the mall area joining them, moved up on St. Louis Street to the north end of the service station at the end of the block directly across the street from the Courthouse. And they completely packed that area from the service station back to America Street. There were a few but not a great number across America on St. Louis toward North Boulevard.

Q Let me ask you something because I just don't have it right in my mind.

A Yes, sir.

Q How many different areas did you see them coming from? I am satisfied about the one where they started off from the Capitol and were coming down the south side of North Boulevard till they get to that parking lot and then on down the sidewalk on St. Louis.

A Judge, I was in and around the crowd. I moved up about the same time they did, and as I came up to -- up North Boulevard and turned down North Boulevard, I saw people coming across from the mall area and joining the group across North Boulevard from -- what is it -- south -- no, from north to south across North Boulevard from the downtown area and joining in the group.

Q You saw some coming then out of Third Street?

A Yes, it was noticeable because --

Q Across that little area there where we have the statue?

A That's right, but -- well, I started to make comment to the south thoroughfare -- pardon me, the north thoroughfare, but on the south thoroughfare, I noticed considerable congestion of traffic. There were people in automobiles that were being delayed by the crowd crossing the thing, and I was afraid somebody was going to get run over at that particular point.

Q How many people would you estimate that you saw in such formation?

A Well, that is pretty hard to estimate. My first estimate on the air of the number in the demonstration was three thousand. From that time --

Q You are not a big estimator, though, are you?

A No, actually we came up with the estimate of fifteen hundred. However, those estimates are generally reached by a concensus of newsmen getting together and saying what do you think there is and --

Q Well, anyway --

A By far the largest part of the people came from the Old Capitol Building rather than from Third Street in effect. They moved up onto St. Louis Street, the west side of it, a few of them were in the street, but the vast majority were on the sidewalk. The sidewalk was very, very tightly packed. It took a considerable time for them to get on the -- get into their demonstration actually, to form for their demonstration. It took considerable time, ten or fifteen minutes, I don't know, five, ten, fifteen minutes. At that time Cox was in the street. There were a few people who took picket signs from under their wraps and unfurled them. There were -- two or three of them were in the street as well. However, they were right hard against the curb. Cox would address the crowd putting his hands to his mouth and turn this way and talk to them (indicating) and turn this way and talk to them (indicating), and say, "Now we will sing this" or "Now we will have a moment of silent prayer" and things of that sort. At the same time there was a group of people that had come out of the Courthouse, white people, on the east side of St. Louis Street. The police officers were, I would estimate, a third of the way toward the middle of the street from the east curb of St. Louis Street. The group of white people that gathered to see the going's on were perhaps two hundred, two hundred fifty, were from the Courthouse and other people who didn't look like they were from the Courthouse.

They didn't have coats on and things of that sort. They were watching the demonstration. At one point Cox -- the singing went on and so on and Cox said, "We are all hungry and it is getting near the lunch hour. When we leave here, you will go to the places designated" or listed or something of that sort -- "and sit down for one hour until you are served." He said that those places have twenty counters, and you are welcome in all of them but one, and you are to go in that one and stay for that hour. With this there was some reaction from the crowd. I would have thought a loud reaction from the crowd had I not heard a louder one some time later. There also was considerable stirring in the -- from the white people on the other side of the street, a restiveness at that. Then a short time after that the group -- there was singing coming from the jail and that was met with a loud reaction from the crowd demonstrating on St. Louis Street, and at that point the Sheriff of the parish stepped forward. He took a portable loud speaker from somebody, I don't know who, and said, "I am the Sheriff of this parish." I am quite sure he gave his name, "Bryan Clemmons." "Standing with me is the Chief of Police and the Mayor. You have had more than the time that you were going to have your demonstration." I think he said in fact, "More than your seven minutes. This is getting out of hand.

Break it up." Or "I call on you to break it up" or words to that effect. With that Cox turned and folded his arms and looked like this (indicating), looked first at the crowd and then at the Chief and definitely gave the impression of a man who was not going to leave, in fact, of a man who was very pleased at the turn of events. About that time two of the deputies --it happened that one of them was the son of the Sheriff -- who were standing near the Sheriff, went over to the crowd and I think made contact with the people on the front row of the crowd, put hands on shoulders as though to shove them away. And at that the Sheriff said, "No, come back, give them a minute," or "Give them a little while to break up." A short time after that the first tear gas shell was exploded, and I broke for a telephone while the crowd broke to get free of the tear gas.

Q Did you hear the defendant say anything with regard to the order given by the Sheriff?

A I can't testify that I heard him say anything. I saw him, but I sure can't testify that I heard him.

BY MR. WARD:

Q Mr. Erwin, when the Sheriff requested the demonstrators to disperse, did the defendant do anything which appeared to comply with that request?

A No, he gave a complete appearance of not complying with the request, of no desire for dispersement at all.

BY MR. PITCHER:

Q Now, Mr. Erwin, would you say that Cox was in complete charge of this crowd?

A Absolute charge.

Q In other words, there was no question as to who the leader of the crowd was, and was there any question about his authority over the crowd?

A No, because I remember thinking at the time that he was talking to the demonstrators in such a way that he pretty much owned them, that you almost had the feeling that it was a teacher speaking to a group of small children on a school yard.

Q Is it your intent to convey to the Court the impression that Cox did not say anything to the crowd after the Sheriff ordered them to disperse or that you just didn't hear it?

A I didn't hear it. That was a time of reaction. There was noise going on.

Q I see. In other words, could he have said something without you hearing it?

A Yes, sir.

BY THE COURT:

Q How long was it after that, in your opinion, in time was it from the time that they gave the order for them to move or to disperse until the time when they threw the first tear gas?

A Three or four minutes would be my estimate.

BY MR. PITCHER:

Q In other words, there was sufficient time for Cox to tell them to move before the tear gas was thrown, in your opinion, then?

A There was plenty of time. There was no -- there was no reaction from Cox as though he was going to leave.

Q Was it apparent to you that he wasn't going to leave?

A Yes, that was my interpretation.

Q And I believe you said he looked like a man who was well pleased with the turn of events?

A Yes.

MR. PITCHER: I tender the witness.

CROSS-EXAMINATION

BY MR. JONES:

Q Within that three or four minutes from the time he said to move on and the throwing of the tear gas, what was going on?

A The two deputies had gone across the street, the Sheriff had called them back, there was noise from both crowds not nearly as great as there had been at the first singing. I believe there was even singing still going on upstairs. At least there was noise coming from the jail area, and it was a pretty confusing time. And the -- and Cox so far as I know was standing with his arms folded and facing North Boulevard, looking first at the crowd and then at the Sheriff.

Q At the time that the order was given "Move on" by the Sheriff, what was going on?

A Well, actually, when the Sheriff started speaking on the P. A., on the portable speakers, it is a pretty loud thing, and it seemed to shock the crowd into some quietness at least. It had a long way from restored order, but at least the crowd was not nearly as loud as it had been the instance when he first spoke, and as I say, it was a dividing time, and those things are pretty loud and they are pretty shocking.

Q Now, at the time that he asked Chief Wingate White, is that what you say, that he was talking to Chief Wingate White?

A That's right.

Q And Chief Wingate White -- just go through that for me again for me. I am sort of hazy on that.

A About the meeting in the street?

Q Yes.

A Well, Cox was near the front of the group of demonstrators who were coming up. The Chief stepped forward from his position and said, "Who is in charge here," or "Who is running this," or words to that effect, and the defendant came out of the group and stepped over to talk to the Chief.

Q When you say "defendant," you mean Reverend Cox?

A That's right. I didn't know at that time his name, though.

Q I understand.

A He stepped over to meet the Chief and the Chief said, "What are you up to" or "What is going on" or "What is the nature of this." I certainly don't recall his exact words. And the defendant said, "We are here to demonstrate in protest or in favor of the group upstairs."

Q And what did he say "in protest of" or "in favor of"?

A I would hate to swear to his exact words. I know the word "protest" was used. I have the impression that he said "in behalf of," also. I am quite sure he said "in behalf of the people who have been arrested for picketing."

Q Could he have said "in behalf of those in jail and in protest of racial segregation"?

A No, the word "racial --" The only reference I heard to race in that discussion was at the end of it I did hear Reverend Cox as he moved away say something to the effect, "If you had been born colored " -- I think -- I hate to use this word, but I believe he said, "If you had been born black, you would know why we are here," but that was as he was rejoining the group and on the way from the Chief and after the time had been established and so on.

Q I understand. Now, who established this time, the Chief of Police?

A The Reverend Cox set the time.

Q And he said -- what time was that?

A He said, "It will take us seven minutes."

Q Seven minutes to do what?

A For a demonstration.

Q Did the Chief of Police agree to that and consent to him using that time?

A Yes, my impression was that the Chief said, "Yes, you have seven minutes but no more," or "We will give you the seven minutes," or something like that. My understanding was that they would be allowed to demonstrate if they stayed on the west side of the street and stayed within the recognized time.

Q That was your understanding?

A Yes.

Q That he gave them the permission for seven minutes to demonstrate on the west side of St. Louis Street, is that right? Is that the way you understood it?

A I would rather say he agreed to it rather than gave them permission, if you don't mind. I mean there is a little difference in semantics, but --

Q I understand. He agreed to it.

A Yes.

Q He consented to him doing that?

A He agreed to it. That's right.

Q Was Sheriff Bryan Clemmons present at that time?

A I didn't see him at that moment. The first words I heard the Sheriff say were those on the P. A.

Q And what were those words?

A That your time is up, you have taken considerable more time than you were granted or were supposed to take or something of that sort. It's time now to break it up. It's getting out of hand, and that --

Q And when he said the time was up, did he have reference to the fact that more than seven minutes had been used?

A I was confident that was what -- I don't know that, but that was my understanding.

Q Then would it be your testimony that the Sheriff of the Parish of East Baton Rouge, Sheriff Bryan Clemmons, also concurred in the granting of the seven minutes to demonstrate?

A No, I couldn't -- I wouldn't know.

Q You wouldn't know?

A I wouldn't know, not at all.

Q But you did say -- it is your testimony that Sheriff Bryan Clemmons, the Sheriff of East Baton Rouge Parish --

A He is Sheriff, yes.

Q -- said that you have used your seven minutes, isn't that right, or your time is up?

A Words to that effect, I will certainly agree to it, yeah.

Q Is it your testimony that the statement that your time is up was with reference to the seven minutes which the Chief of Police of the City of Baton Rouge had granted or agreed to?

A I would think so --

MR. PITCHER: I have made no objection, If Your Honor Please. I have made no objection prior to this time because I don't think it makes a lot of difference whether or not anybody ever agreed. I take the position that Your Honor is well aware of the situation, having seen the pictures and being fully apprised of what went on, but no one, the Sheriff, the Mayor, or anybody else can give permission to violate a criminal statute, and that's exactly what we have here, and I am sure that none of these gentlemen will testify that they gave any permission to do any such thing, but Mr. Erwin is being asked if in his opinion he believed that they were giving permission or did they do this. I suggest to Your Honor that it is immaterial and inadmissible. I haven't objected, because I wanted him to get in everything that he can, but I object now on the grounds that we are wasting time.

MR. JONES: Your Honor, the whole outfit here, all that they have done is not any criminal violation, as we have been arguing and maintaining from the beginning of time. The main thing is an effort on the part of the State to perpetuate racial segregation. We know that, and these criminal charges here are just a perversion of what really has happened and taken place. It is converting a perfectly legitimate activity into a criminal one in order to perpetuate something that is outlawed, and that is racial segregation.

MR. PITCHER: If Your Honor Please --

MR. JONES: That is what is before the Court.

MR. PITCHER: This hasn't been outlawed yet, and if these people --

THE COURT: Let's get back on the questions. We are going to have the argument after the trial. Excuse me for cutting you off, Mr. Pitcher, and also let me make this known to you, that what he happens to think about why the Sheriff or what the Sheriff was giving them time to do really won't replace what I am going to have to think about it. You can ask the Chief of Police who I suppose will be called as a witness --

MR. PITCHER: Yes.

THE COURT: -- about what his impressions were about what somebody who actually spoke to the crowd meant, but it probably won't ever replace what the speaker meant by that, so we will let Chief White tell us about that.

MR. JONES: Is that being overruled or sustained?

THE COURT: That is correct. Overruled. No, I sustain the objection because it is right in law, but it doesn't impress me too much as someone who is present and able to testify in court can say what he meant when he said something.

MR. JONES: Yes, sir, to which ruling I except, Your Honor, and ask that a bill be reserved.

THE COURT: All right, let the record show that he excepted to the ruling of the Court, and I guess you want to attach to it counsel, the remarks of the Court and the question and answer.

Q Now, at the time the Sheriff gave the order to move out, what was the reaction of the crowd at that time?

A The crowd was stilled. The crowd looked at Reverend Cox to see, obviously for instructions of what to do now.

Q Was the demonstration orderly at that point?

A Yes, the Sheriff speaking on the loudspeaker quietened it down considerably.

Q Do you think the Reverend Cox heard the Sheriff give that order?

A I am confident he did.

Q Now, at what point did Reverend Cox instruct the crowd or the demonstrators to go downtown and eat and use the eating facilities, the cafe counters?

A At what point?

Q Yes.

A Well, throughout the demonstration between songs and between prayers and so on, Reverend Cox would speak to the group, as I say, putting his hands here (indicating) and turning first one way and then another to the crowd, and it was, shall we say, two-thirds of the demonstration through perhaps, maybe a little more than that, maybe four-fifths of the demonstration through. It was not immediately before the crowd was dispersed. It was nearer the dispersing time by far than the forming time, though. I know that is a pretty indefinite answer.

BY THE COURT:

Q Further toward, in your general estimation, toward the end of the demonstration time?

A That is correct, yes.

Q It was about the last part of the program, so to speak?

A It was close to it, but I really think they sang another song after that. After he told them to go to the sit-ins, as I recall, there was another song and then that song was answered by the people in the jail and --

Q That is your impression of the chronology of the --

A That is the best I recall.

Q And after he told them that we were going downtown and eat or words to that effect?

A Yes. Then, as I recall, there was another song from the demonstrators and then that was --

Q You are not positive?

A No, I am not, Your Honor, but my impression was that the song was answered by the demonstrators -- not the demonstrators, by the people in the jail.

Q You don't know whether they were through singing or not?

A Who was through singing?

Q When that remark was made.

A No, no.

THE COURT: Let's go on.

BY MR. JONES:

Q Was the demonstration generally orderly?

A Yes, Reverend Cox had it very well controlled.

Q Was it orderly up to the point of throwing the tear gas?

A No, there was one minor outburst after he called for the sit-ins, and then a minor reaction, and then a loud reaction, not disorderly, loud. How is that? A loud reaction when the singing occurred upstairs.

Q It wasn't a violent reaction, was it?

A It was a strong reaction. It was -- I think we argued about this in Federal Court. It was jubilant.

MR. JONES: I think that is what it was. Thank you.

THE COURT: Do you have any more questions?

MR. WARD: I have one or two more, Your Honor.

REDIRECT EXAMINATION

BY MR. WARD:

Q Mr. Erwin, when the defendant urged these people to -- let me put it this way. Mr. Jones has asked you questions with respect to the Reverend Cox urging these people to go eat, the question implying that it was simply a request to leave and eat in a normal, orderly fashion. Was it your impression that his request that they sit in the lunch counters and remain there for one hour was a continuation of the demonstration rather than a normal eating process?

A Yes, it was not only that. It wasn't a request. It was instructions. I think I can quote him. I hope so, as, "We will now go. We are all getting hungry. We will all now go downtown," and words to that effect. It wasn't a request. It was an instruction.

Q At the time that he gave them that instruction, did he make any gestures with his hands or arms or in any manner?

A Yes, not only that time but throughout the period -- once more, between songs, between prayers he would speak. He spoke with his hands gripped like this (indicating) and like this (indicating) and also he used his hands to his mouth.

Q And after he made -- immediately after he made that or gave them that order to sit in the lunch counters, was there a reaction from the demonstrators which was different than what they had done before?

A Yes. Yes, there was a reaction, some applause and some laughter and some reaction from the demonstrators.

Q Now, was it at that point that you, as I believe you testified previously, became apprehensive that the situation was getting out of hand?

A Yes, I was not -- I had, as far as the demonstrators were concerned, I felt as long as the Reverend Cox had them under control he could control them. However, the reaction from the people on the other side of the street was electrifying. You could feel a distinct reaction, and you could hear grumbling from the small groups of white people, some total of two hundred fifty, perhaps, on the side of the street nearer the Courthouse, and there was a definite feeling of ill will that had sprung up or had become more noticeable, perhaps, is a better word.

Q Now, you testified a while ago that after the Sheriff requested these people and the Reverend Cox to break up and disperse, you didn't hear any remarks by the Reverend Cox, but at that time after the Sheriff requested, what was your impression of the defendant's attitude toward the Sheriff's request based upon your observation of the motions of his hands and arms, his facial expression, et cetera?

A Defiance.

Q Defiance.

MR. WARD: That's all.

MR. PITCHER: That's all.

RECROSS-EXAMINATION

BY MR. BELL:

Q Mr. Erwin, on that day, you weren't afraid of Reverend Cox and his group, were you?

A I have been thinking about that. It is my job to be in places like that. Had I been in that situation and not -- on my own time -- I wouldn't have been there. I would have been afraid, but you have a job to do. I am quite sure you go places where you are not afraid when you are supposed to, but I wouldn't have been there if I wasn't being paid to be there.

I didn't think about being afraid while I was there, by the way.

Q What you are saying, you were afraid that you might have received harm from Reverend Cox or possibly some of his followers? Are you saying that?

A I wasn't afraid of it, no.

Q You wasn't afraid?

A No.

Q Did you see any white persons walking or -- on the same side of the street or on the same side of the sidewalk that the Southern University students were on?

A I was at one point.

Q You was?

A Yes, not after they formed, but when they came up North Boulevard. I was working my way in and out of the -- actually they had divisions. They were almost in companies. There were breaks between the groups, small breaks between the groups, and I would manage to get between and skirt out in the street and back over in between another group.

Q Do you think that if you would have asked one of the students to move if he was blocking the sidewalk that he would have gotten out of your way?

A Not unless the Reverend Cox had asked him to.

Q I mean do you have the impression that they were surly or arrogant or were they just peacefully demonstrating? What was your impression?

A Well, I think that the impression was that they were going to go where they were told and that I -- the only way I -- if I had chosen to go through the crowd, that I would have had to fought my way through it. I don't mean fought. I don't think they would have fought back. I think I would have had to push my way through it. They were -- I am sure, I feel confident that they would have gone under Reverend Cox's instructions to be nonviolent, and I think if I had spit upon one, they would not have spit back. I think, on the other hand, to get through that group, I would have had to shove them out of the way.

Q Well, you could have asked them to move, couldn't you?

A I had no occasion to. You asked me my opinion. I don't believe that they would have moved upon my asking them.

Q However, you have stated that you would have had to shove them out of the way. Couldn't you have asked them to move, and I think you have said you were confident that they weren't going to do you any violence, that you would have just asked them to move and they would have moved out of the way?

A There is a great deal of difference, in my opinion, and you have asked my opinion, a great deal of difference between doing me violence and say cooperating, on the other hand. I think if I had wanted to walk up and down the middle -- in through that group on St. Louis Street that was packed, I believe, and this is my opinion, that all the asking in the world wouldn't do any good, that I would have had to shove my way through.

Q But you weren't afraid at any time to walk among the group as you have stated that you had previously done?

A No, I get paid for being there.

Q Now, you --

BY THE COURT:

Q Let's put it conversely. Were you afraid of any white people who were on this side of the street?

A I was afraid only that we were about to have a riot. I wasn't afraid of what was happening. I was afraid of what I feared would happen, which I don't guess I am competent to judge, but you asked me my feelings and that is how I felt.

BY MR. BELL:

Q Now, Mr. Erwin, you testified that you were afraid that the white persons on the east side of St. Louis Street had begun to congregate and you had heard rumors or murmurs of violence --

A Murmurs.

Q Murmurs of violence?

A Did I say "murmurs of violence"? I think I said I heard "murmurs." It was -- there was considerable ill feeling, considerable.

Q Now, the ill feeling that you felt on that day was coming from the white persons? It was not coming from the colored people?

A Well, thinking again and recalling Reverend Cox saying, "If you were black, you would know how we feel" or something like that, there was reason for ill feeling on both sides, perhaps.

Q Did you hear the statement of Reverend Cox that day when he was exhorting these Southern -- the demonstrators to -- didn't you hear the statement of Reverend Cox that day when he told the crowd not to fight back, not to hit back, and you still say that you felt that the violence would come from the demonstrators?

A Yes, I heard that. I thought violence was about to erupt. I was very concerned about the likelihood of violence, the feeling that nothing could come from this but violence and more ill feeling, and I -- it was a frightening thought that violence could occur across the street from the Courthouse in Baton Rouge, Louisiana. I feel true enough and quite earnestly that while Reverend Cox instructed the demonstrators that there would be no violence, there is certainly excellent -- I think anybody in the radio business or the advertising business can understand that some of the best ways to get a reaction is to call against a reaction. I don't think that the Reverend Cox was calling for violence at all, violence from his demonstrators. I think the Reverend Cox welcomed the tear gas. I think that the Reverend Cox welcomed the reaction from the white crowd. I think Reverend Cox welcomed the reaction that occurred on Third Street. That is once more my opinion.

Q But you will testify to the fact that no act of aggression came from Reverend Cox and his followers?

A There was no physical act toward anyone that I saw, that's right.

Q No probability of any acts of violence or acts of aggression?

A You are getting into law now, and further in semantics, is filling up St. Louis Street an act of aggression? I don't know.

MR. BELL: No further questions.

MR. PITCHER: That's all, Mr. Erwin. Thank you very much.

MR. JONES: One more question.

BY MR. JONES:

Q When you say this crowd was "electrified," now which crowd was that electrified?

A Everybody I could feel around me.

Q Was that the white crowd or the Negro crowd on the other side?

A I was closer to the white crowd. How is that? I felt -- I could react more nearly to that group than I could to the colored group across the street, and there was a feeling of impending excitement, and I was afraid that it would lead to violence.

Q And when you say "electrified," you are saying that the white group was electrified? You used the word.

A That is correct. I used it in regard to a feeling that I had.

BY THE COURT:

Q The feeling of the white people was electrifying to you?

A The feeling somewhere around there let me know that there was about to be trouble. That's for sure, and I once more thought that the Reverend Cox had his group under control, and violence if it did occur would come from the whites.

MR. JONES: That's all.

MR. PITCHER: That's all.

WITNESS EXCUSED

. . . .

(At this time court adjourned for the day.)

TUESDAY, JANUARY 30, 1962

The trial of these cases was resumed:

MR. PITCHER: Call Mr. Ossie Brown.

MR. JONES: Your Honor, I want to move for a continuation of sequestration of the witnesses. I also want to reurge my objections to the defendant being tried in a court that is segregated, and I also want the record to further show that additional officers are put on the force and maintained during the trial of this case for the purpose of continuing the segregated pattern within the Courthouse, and in addition to that that the fire marshals are also on hand and being utilized at the Courthouse in order to continue and maintain the segregation pattern in the Courthouse.

MR. PITCHER: If Your Honor Please, I am going to object to those remarks being entered in the record for this reason. They are not remarks made under oath. If counsel wants to take the witness stand and subject himself to cross-examination, he can testify to anything he wants to about segregation that he says is maintained in this courtroom. On the other hand, those remarks are most objectionable because his testimony is not from the witness stand, it is not under oath; and, therefore, it should not form a part of this record. If he decides to take this witness stand and anybody he wants to take the witness stand, they have a perfect right to do it when they open their case, but I ask that those remarks be stricken from the record.

THE COURT: In any event, they amount to nothing more than self-serving declarations of counsel themselves and are not evidence.

MR. PITCHER: There is no proof of anything he said.

THE COURT: I would like the record to reflect just anything he would like to say without regard to whether he is right or wrong, but anything he wants he can have in the record, notwithstanding the fact that I don't think it's pertinent, and notwithstanding the fact that I know that it is still a self-serving declaration. For example, counsel, you could get up and say that an effort to jam-pack this courtroom with members of the colored race could possibly have been inspired by the accused himself or by other counsel. You could say a lot of things, too, in the way of argument, but it wouldn't --

MR. PITCHER: That is the only reason I haven't made those remarks, If Your Honor Please, because I am not going to take the witness stand.

THE COURT: All right, let's continue with the trial.

MR. PITCHER: Ossie Brown.

MR. JONES: Your Honor, I want the record to show that there are vacant seats as well being maintained in reserve and that there are colored citizens on the outside waiting to come in who are interested in the case and that they are not permitted to utilize these vacant seats.

THE COURT: All right. Have the Deputy Sheriff go out and count the vacant seats in the courtroom, and count the number of colored people waiting outside that don't have seats.

OSSIE B. BROWN, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q State your full name, please, sir.

A Ossie B. Brown.

Q What is your occupation or profession, Mr. Brown?

A I am an attorney, sir.

Q Where is your office located?

A 218-220 St. Louis Street.

Q How long have you been practicing law in this parish?

A Since 1954.

Q Is your office directly across the street from the front door of the East Baton Rouge Parish Courthouse?

A Yes, sir, it is.

Q Was your office located there on December 15, 1961?

A Yes, sir.

Q What, if anything unusual, occurred on that day, Mr. Brown?

A Mr. Pitcher, on that date I returned from City Court approximately 11:30 and I went -- I always use the back entrance to go to my office, which is on the parking lot area, and I went into the office, and I had some clients waiting for me, and I began seeing the clients in regular order, and I have what would be commonly called a squawk-box which permits me to hear anything which is going on in the reception room and permits me to be able to talk to anyone from my office to the reception room, and while I was seeing a client, I heard a noise other than the music and television which normally would be heard which I did not recognize as being a normal sound coming from my reception room, and I turned up the squawk-box and I could hear -- it would not be singing. It would be more of a chant, I would say it to be. Just out of curiosity I got up and walked to the window in my reception room and looked out.

Q Does your reception room front on --

A My reception room fronts on St. Louis Street, yes, sir. It has two windows on St. Louis Street and then, of course, two doors. The doors, of course, are solid wood, but in looking out of the window, I saw, oh, a tremendous number of people, and I could look naturally down through the window to my right and to my left, and all to my right, which would be that area of the steps which would lead to my office, and that portion underneath my office, were covered -- that area was covered with people.

Q Now, Mr. Brown, is there or is there not a driveway into the parking lot on the south side of your house, of your office, as it faces St. Louis Street?

A Yes, sir, that would be on the south side of the building.

Q And which opens into St. Louis Street?

A Yes, sir, from a back parking lot.

Q Was that area completely blocked, also?

A Yes, sir, that was.

Q And, Mr. Brown, would you say that these people completely blocked normal passage on the west side of St. Louis Street from the time you got there until the time you walked away?

A Yes, sir.

Q Now, go on then and tell, if you would, in your own words, just what happened when you looked out?

A When I looked out the window the thing which I remember most vividly seeing in addition to the numbers of people was the fact that I saw the Sheriff and, if I am not mistaken, Mayor-President Christian, but I then stepped back and went on back to my private office, and shortly after that, and as I said, I had people in the reception room, and these two clients in my private office. Then I began to hear banging on my door. I immediately went to the door and told everyone in there under no circumstance to open the door.

Q Was your door locked?

A Yes, sir, the doors were locked because it had gone through the noon time, and the girls had gone to lunch and I told them under no circumstances to open the door, and the doors were not opened, and of course, I had people in the office at the time and --

Q I believe you said that the passageway was completely obstructed from the street into the parking lot into the back?

A Oh, yes, sir, and also -- in other words, I remember distinctly having to let the clients who were in my office at the time go through the side. They couldn't go out the front because the front door was blocked. I mean if I had opened the front door, I would have had no control at all over it, so I let them go through the side door which opens into this driveway about which you spoke a moment ago.

Q In other words, the entrance to your office building was completely blocked for a period of time?

A Yes, sir,it was.

Q You didn't see the tear gas or anything like that?

A No, sir, I did not.

Q You were back in your private office at that time?

A Yes, sir.

Q But did you hear any unusual noise just before the tear gas or do you know when the tear gas went off?

A No, sir, Mr. Pitcher, I don't. It was after I had gone and it seemed the Sheriff -- had gone back to my office, because it was after I heard the knocking on the doors, and --

Q Would you say it was just a normal knocking or was it a pounding?

A No, sir, it was a pounding.

Q Did you have an occasion to see any of these people running through an alleyway?

A Yes, sir, I did, and I instructed everyone to be sure the doors were left closed, and the doors were locked and stayed locked throughout this time.

Q Would you say that this was a normal situation out there, Mr. Brown?

A I have never seen it that way before, sir.

Q Did you happen to see the defendant in this case on that particular day?

A I cannot say that I did, sir.

Q But you have testified I believe that your office-way was completely blocked, your entrance?

A Yes, sir, the entrance to the office.

Q And the driveway?

A Yes, sir.

MR. PITCHER: I tender the witness.

CROSS-EXAMINATION

BY MR. JONES:

Q Is it your testimony, Mr. Brown, that you did not see the defendant, is that right?

A Johnnie, to my knowledge, I did not see him.

Q You don't even know whether he was present or not?

A I couldn't say that he was or that he was not.

Q Do you know who was knocking on your door? Do you know that it was the defendant or someone else?

A No, I have no idea who it was. It was --

Q Do you know whether or not it was anybody that was in this demonstration knocking on your door?

A That would be calling for an opinion, Johnnie, and I did not see who it was.

Q Now, at the time that you went into your parking lot area in the back of your office, had this demonstration assembled in front of your office?

A Johnnie, at that time all I could see would be a number of people on down. In other words, as I go to that office, I would be going down America Street west toward the river and I could see people walking in a steady line down toward the Greyhound Bus Station and the Old State Capitol. At that time there had been no massing or anything like that in front of my office, no.

Q Did you have any occasion at that particular time to want to use your driveway to come out?

A I would like to have used my door during the time this was going on, yes, because I mean it would be -- it just isn't wise for me to have to let people go through Mr. Bradley's private office to get out after they have seen me. Normally, they will go right on out the front the way they came in.

Q You testified that your door was locked, did you not, sir?

A Yes.

Q And why was it locked? Why was your door locked?

A My door was locked at noon time because of the noon hour. The door normally would have been locked until approximately one o'clock. However, anyone who is in the office to see me, he leaves -- comes and leaves by the same door. He would have gone out the front door, but in this instance no one could go out the front because of blockage.

Q Now, you say this was an unusual situation?

A It was unusual in that -- Mr. Pitcher asked me if I had seen this happen, if it was unusual. I said it was the first time I had seen any incident like this before, and it was.

Q Are you implying by that that you have never seen a demonstration?

A I have seen demonstrations, but Johnnie, I have never seen a demonstration such as this in front of my office.

Q It was unusual in the fact that the demonstration was on St. Louis Street?

A On St. Louis Street and I have never had anyone come to my office like that.

Q Would you say that this demonstration was orderly conducted?

A The only thing that I could say with reference to that was the noise which attracted my attention was this chanting which I didn't recognize the sound to be. I then proceeded to the front window, at which time this singing or chanting, whatever you wish to call it, was still going on, and then when I saw the Sheriff, I stepped back and went back into my office, and then immediately after that -- I say immediately after that, shortly, is where I heard the pounding on the door and then I got up again and saw the people running.

Q I don't think the answer was responsive to my question.

A I will do my best to answer.

Q My question was whether or not this was an orderly demonstration.

A The first part would have been orderly. The second part certainly was not orderly, no.

Q The second part, what constituted the second part?

A The part after which I returned to my private office to sit down and continued consultation with my clients, that part which took place in that particular time with the pounding on my front doors and the running would not be orderly.

Q They were running?

A Yes.

Q Do you know for what reason they were running?

A I don't know why they were running.

Q Now, you testified that the pounding on your front door -- you do not know whether or not that it was the defendant or any party within the demonstration?

A I couldn't say that it was the defendant or not.

Q It could possibly have been someone there for the purpose of visiting your office on regular routine work, could it not?

A He couldn't have gotten -- no client I don't think unless it would have been one who was there in that group could possibly have gotten to my office if he had wanted to see me; and, of course, it would have been during noon time and normally, I wouldn't let anybody else in. I would only let those out, because I would want to go to lunch afterwards.

Q And it is a possibility that one in that crowd or in that demonstration could have wanted to retain your services?

A It is possible.

MR. JONES: That's all.

BY THE COURT:

Q How deep were they in front of your place?

A Judge Blanche, they were I would say four or five deep, and then, of course, I couldn't see the exact number which were on my steps and which -- but it was crowded. You couldn't get in or out.

Q You were there, weren't you?

A Yes, sir, I was there.

Q You saw how deep they were in front of your place?

A Yes, I did.

Q And you heard and saw part of the demonstration?

A Yes, sir.

Q What was your reaction to that?

A Judge, to be frankly perfectly frank, sir --

Q As a private citizen, what was your reaction?

A Well, at the time I had in my office approximately ten people, and I would say it was equally divided with reference to colored and white. At that time, sir, I was concerned, I was a little worried about the situation that I had this going on outside the office and these people in the office, and we couldn't get out. I myself was not scared, but it could have caused -- well, the people in the office expressed concern definitely as to both groups, and I stepped in and told everyone to please be quiet and keep their seats.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q In other words, you were apprehensive because of the attitude of the people in your office generated by this mob in front?

A Yes, personally not I but the people, yes, I was apprehensive as to what their conduct would be. I myself --

Q One question, Mr. Brown, I forgot to ask you. From your observation looking out of the window of your office, with reference to the west side of the street, that was your side of the street --

A Yes, sir.

Q Who constituted this crowd, colored or white?

A Oh, they were colored people, sir.

Q Have you ever seen this Courthouse picketed before or demonstrated against like that?

A No, sir, I never have.

MR. PITCHER: I believe that's all. Thank you, Mr. Brown.

RECROSS-EXAMINATION

BY MR. JONES:

Q Now, this person or --

A Johnnie, I can't hear you.

Q This person or persons that were knocking on your door, were they colored?

A I could not see them at the time they knocked. I could not see through the window, Johnnie, there were colored people on the steps. I didn't see who it was knocking, I couldn't see them at all.

Q Now, you do have colored clients?

A I certainly do.

Q And they do come to your office to the front door, do they not?

A Yes, and leave the same way.

Q Now, you testified that you saw some running of these people who were taking part in this demonstration, did you not, sir?

A Yes.

Q But I think you testified that you did not know when the tear gas was thrown?

A I did not. I did not see that.

Q Now, immediately after you saw this running, was this demonstration still assembled in front of your --

A No, it disassembled in a hurry.

Q In a hurry, and it did not --

A It did not reform nor regroup, no.

Q It did not reform or regroup. In other words, that was the end of it, is that right?

A Yes.

MR. JONES: That's all.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q Mr. Brown, were you concerned about the fact that the young ladies in your office were out to lunch and would be returning in a short period of time?

A Yes, sir, I was, Mr. Pitcher, because there is no place for them to come through unless they, too, were to come in the back, and both girls always -- I wouldn't say every time, but in the normal procedure the girls come through the front and take the little sign off the door which says "Out to Lunch," and resume their normal activities.

Q At this particular time with this mob out there, they couldn't have done it?

A No, sir, no one could have unless they would have been one of the mob.

MR. PITCHER: Thank you very much.

MR. JONES: Just one more question.

RECROSS-EXAMINATION

BY MR. JONES:

Q Did you consider this demonstration a mob?

A I beg your pardon?

Q Did you consider this demonstration a mob?

A I considered it a demonstration and passed no reflection at that time, prior to that, at that time nor since whether it was a mob --

Q At the present time do you consider it a mob?

A You are asking for an opinion --

Q Yes, you saw it.

A It was a very disorderly group that I saw on my steps and pounding on the door.

Q Were they orderly before they started running or --

A Johnnie, I didn't stand there and look, I merely went to the door and as I said, I heard this singing or chanting, and I saw the people lining the street on both sides, particularly on my side, and I saw the Sheriff. I remember seeing the Sheriff. I remember seeing Mayor Christian and then I left and went back to my private office.

Q One more question. Across on the east side of St. Louis Street and on the Courthouse grounds, did you see a crowd of people assembled there?

A I saw the law enforcement officers in the background there, and as I say, I distinctly remember seeing

Sheriff Clemmons and the Mayor, because they were directly -- in other words, they were in the street, Johnnie. When I looked out that window, it would be just like me looking directly at you, they would be about in my line of vision. Of course, I went on back.

Q Did you see anybody other than the law enforcement officers, is that right?

A There could have been other people. I cannot tell you who else I did see. I remember seeing uniformed deputies and police officers, and I distinctly remember seeing the Sheriff and Mayor. I had no cause at that time to remember who I saw and who I didn't, you see.

Q Why you didn't have any cause, Mr. Brown?

A I myself was not concerned with who was present and who wasn't present at that time, and so long as no one came into my office, I would not have anyway of knowing anything at that time, Johnnie, and as I said, they tried to get into the office and I told them, "Don't open the door and please be quiet," and everything went off orderly in my office.

Q Were you in anyway disturbed about this?

A Yes, I was, to be frank. I was, yes.

Q Describe how you were disturbed.

A How I was disturbed, I myself was not -- my relationship with my clients is such that I personally had no fear of anything on the part of my clients, none whatsoever. My relationship is such that I maintain a good relationship with my clients. I was apprehensive, Johnnie, with reference -- I didn't know, I had people from different areas in the office then, and as I say, about equally divided. I didn't know what might be their attitude or what might be the result of anything between them and among them. I was apprehensive as to that plus the fact that to be frank, I didn't want anyone getting in my office, dozens of people like that. I would have been stampeded out of my office, because that would have been the only exit other than the driveway, running through my office, and I just couldn't have --

Q Did you at any time think or feel that they were going to do you any bodily harm or destroy your property?

A Myself?

Q Yes.

A They would not, no. I had no worry at all, my property, not deliberately, but there would have been no way they could have avoided doing damage to the property had they come on through there. There would have been no possible way to keep from it. I don't think they would deliberately have done it, but it would have happened.

Q Had they come through --

A Had they come through or the door been open, they would have had to. Personally, I was not afraid.

Q Did you at any time think that they were going to come through?

A Yes, I did, because that door took a terrific beating, the door which is situated on the north side, the 218 entrance, it took quite a bit of pounding.

Q But you did testify that you don't know whether those was clients or nearly clients?

A No, I don't know whether or not those were nearly clients or clients, no.

Q Do you know whether or not it could have been a tear gas bomb that was thrown over there against your door?

A I couldn't tell. All I know is that it was just knocking and banging on the door. If I would say what I thought it was, Johnnie, again it would be an opinion.

MR. JONES: Thank you.

MR. PITCHER: Thank you very much.

WITNESS EXCUSED

. . . .

JAMES DUMIGAN, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified

546 SEDFRE

Louisiana vs. B Elton Cox, Jan. 29-31, 1962
(Transcript of Trial - Con't)

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as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q State your name, please, sir.

A James Dumigan.

Q Where are you employed, Mr. Dumigan?

A Police Department.

Q How long have you been so employed?

A Almost fourteen years.

Q Were you on duty on December 9, 1961?

A I was.

Q Did you have an occasion to make an investigagion at the location of the St. Marks Methodist Church on the corner of Convention and South Fourteenth Streets?

A I did.

Q What was the purpose of that investigation and why did you go out there?

A I had read where they had had a meeting at this church, and I went out there to see what information I might be able to find in regard to the meeting.

Q When you say "they," who do you refer to?

A The CORE.

Q Mr. Dumigan, did you find any physical evidence at this church?

A I found a flyer or a kind of a bill and this program telling what took place at the meeting.

Q I show you the original flyer, the original program and a photostatic copy of the flyer and ask you if those are the objects referred to?

A They are.

Q Now, where did you find those, Mr. Dumigan?

A The trash can in front of the St. Marks Church.

Q St.Marks Church on December 9th?

A Yes, sir.

MR. PITCHER: In connection with the witness' testimony, I wish to file in evidence the agenda of a meeting and ask that it be marked State-2, the dodger identified by the witness and ask that it be marked State-3, and the other dodger identified by the witness, the photostat of the dodger and ask that it be marked State-4.

Q Now, Mr. Dumigan, did you take part in the -- I show you the agenda of the meeting and ask you does that indicate that Elton Cox was present and took an active part in the so-called nonviolent clinic --

A Yes, sir.

Q -- conducted there on December 8th and 9th?

A Yes, sir.

THE COURT: May I see the offerings, please?

MR. PITCHER: Yes, sir.

(State-2, -3 and -4 were handed to the Court.)

Q Now, Mr. Dumigan, were you on duty on December 15th when the so-called demonstration took place in front of the Courthouse?

A Yes, sir.

Q Did you see the defendant Elton Cox there?

A I did.

Q Would you say that he was in charge of that demonstration?

A Definitely.

Q Did you hear his speech and exhortation to the crowd about the lunch rooms?

A I heard that.

BY THE COURT:

Q What did you hear?

A You mean the whole speech?

BY MR. PITCHER:

Q With reference to the lunch rooms.

A If I remember correctly, he said it is getting near lunch time. I imagine everybody is hungry. There are -- you are served, I think, at twenty counters. There is one counter you are not served at and that there are nineteen places in this district or in this section or something along that line and that when you leave here to go to these places, attempt to be served, and if you are not served, remain there for one hour.

MR. PITCHER: I tender the witness.

CROSS-EXAMINATION

BY MR. JONES:

Q Mr. Dumigan, it is your testimony that you had read where they were having a meeting, is that right?

A That is correct.

Q What had you read, where they were having a meeting or that they were having a demonstration?

A I read that they were having a meeting prior to that meeting at St. Marks.

Q What was the date that you read they were going to have a meeting?

A It must have been around the seventh of December.

Q Did they have that meeting as planned?

A As far as I know they did.

Q Did you attend that meeting?

A No, I didn't.

Q Do you know what transpired or went on in that meeting?

A No, I don't.

Q Do you know whether or not the meeting went on or not?

A I wasn't there when the meeting went on.

Q Do you know whether or not it went on?

A Of my own personal knowledge, no.

Q Where did you say that you got this dodger?

A Out of a trash can in front of St. Marks Church at Fourteenth and Convention.

Q Do you know whether or not the defendant was responsible for the getting out of this dodger?

A No, I don't.

Q Do you know whether or not the defendant put it in the garbage can?

A No, I don't.

Q Do you know whether or not the defendant was present at the time this dodger or this pamphlet called "Direct Non-violent Action Clinic" sponsored by the Baton Rouge Chapter of the Congress of Racial Equality was there when it was gotten out?

A No, I don't.

Q Do you know whether or not that any of these documents that have been introduced into evidence, that the defendant had any knowledge of them, of your own personal knowledge, do you know that?

A Of my own personal knowledge, no.

Q Do you know whether or not the defendant was responsible for the getting out of this dodger here saying: "The Negro citizens of Baton Rouge and Other Residents of East Baton Rouge Parish: Do you want freedom?" Do you know whether or not he got that out, this one on this orange-colored sheet?

A Do you mean whether he printed it?

Q Whether he got it out or was responsible for getting it out or drafting it?

A No, I don't.

Q Do you know whether or not he was responsible for this -- what is that word there, do you know?

A "Agitation,"I believe it is --"action"rather.

Q Do you know whether or not this one which you described as "Action Succeeds Negotiation"?

THE COURT: What?

MR. JONES: Succeeds negotiation.

Q "Selective Buying," do you know whether or not he got this one out?

THE COURT: I want you to identify them by their numbers.

MR. JONES: Yes, sir. This one is marked State-3.

THE COURT: That other document that you were talking about just a moment ago, what was it marked?

MR. JONES: State-4.

Q Do you know whether or not the defendant was responsible for getting out or having anything to do with either one of these documents marked as State-2, -3 and -4?

A No.

Q Now, on this statement that he made which you say you have testified with reference to lunch rooms, and the defendant -- how many places did he say downtown would serve him or would not serve him?

A If I remember correctly, I believe it was nineteen.

Q Nineteen that served him or nineteen that would not serve him?

A Wouldn't. Now, I believe it was put in the way, there were nineteen counters downtown. I don't believe he definitely said whether they would or wouldn't. I think he said there was nineteen places to eat.

Q Nineteen places to eat, and then go ahead and complete that, just what did he say, as you understood it?

A As I understood it, he said that it was getting near lunch time. I imagine most everyone is hungry. There are nineteen places downtown, to go to these places, and the ones on the designated list and attempt to be served, and if you are not served, remain there one hour.

Q You say that was nineteen places downtown to eat, is that your testimony?

A I believe that is what it was.

Q Now, did you find anything of a hostile nature in that statement?

A I don't understand what you mean.

Q Did you find anything in that statement that was -- as the words had been used that was an agitation?

A They don't commonly eat there, is that is what you mean?

Q They don't commonly eat there. Now, who are "they"?

A Colored.

Q Is it your testimony that at these nineteen or twenty counters to which the defendant made reference, they do not serve Negro citizens, is that right?

A There are some places that don't.

Q I say do not serve.

A I say there are some that don't.

Q That don't serve Negro citizens?

A As far as I know.

Q The fact that he told them to come and eat -- to go eat or to have dinner at these nineteen places, did you find anything of a hostile nature, or did you find anything that agitated anybody in that statement?

A I still don't understand exactly what you are trying to get at.

Q Was that a violent statement?

A It wasn't a violent statement, no.

Q Was anything wrong with making that statement?

A In what respect?

Q What do you think? Was anything wrong with it?

A My personal opinion?

Q Yes.

A I think that they should be separated, yes.

Q They. Who are "they"?

A The colored and the white.

Q It is your testimony that the Negroes and whites should be separated, is that your testimony?

A In some things, yes.

Q Then, is it your testimony, the fact that he asked that they go eat at these counters that do not by custom serve Negroes, that he was violating, within your opinion, violating some law?

A I am not familiar with all the law.

Q Then in your opinion, was he breaching the custom of this community?

A It was against the custom, yes.

Q Do you mean that he was doing something wrong by making that statement?

A You mean legally?

Q Legally, morally or what have you?

A I might not personally agree with it. I don't agree with a lot of things, but that doesn't make it illegal.

Q Do you think it was illegal for him to make that statement?

MR. PITCHER: Judge, I haven't objected before, but I am objecting now.

THE COURT: Sustained. What difference does his private opinion on whether there ought to be segregation or integration have to do with this case?

MR. JONES: Yes, sir, I withdraw the question.

Q What happened after he made this statement to go and eat at these nineteen or twenty lunch counters?

A If I remember, shortly after that, there was quite a bit of singing, and there was an awful lot of noise. I couldn't hear everything because I wasn't directly in front of Cox. I was down north of Cox.

Q Were you there when the tear bombs was thrown?

A I was.

Q How long after the statement to go eat at the --

THE COURT: What kind of bombs?

MR. JONES: Tear gas bombs.

THE COURT: All right.

Q The tear gas bombs. Were you there when the tear gas bombs were thrown?

A I was.

Q How long after Reverend Cox made the statement to go eat at the lunch counter that the tear gas bombs were thrown?

A I don't know because the Sheriff talked to them after that.

Q How long after the Sheriff talked to them was the tear gas bombs thrown?

A I couldn't say definitely, because if I remember correctly, he talked to them twice over those bull mikes.

Q Do you recall?

BY THE COURT:

Q You are talking about the Sheriff?

A Yes, sir.

BY MR. JONES:

Q Do you recall any statements that the Sheriff made?

A He told them that they had had their demonstration, that it was getting out of hand when they began hollering and clapping, and that he was ordering them to break it up immediately.

Q Did they break up immediately?

A No.

Q At the time that the Sheriff told them that he had ordered them to break it up immediately, how long prior to that before that that Reverend Cox had told them to go eat at the lunch counters?

A I couldn't say exactly. It was a few minutes.

Q One or two?

A I don't know.

Q Approximately?

A I wouldn't guess unless I know definitely, and I don't know definitely. I wasn't particularly interested in the time at the time.

Q I mean what conception do you have of a few minutes? In other words, your statement was a few minutes, and I would like to know what is your conception of a few minutes.

A I don't know how you would go about defining a few minutes. To me, a few minutes is just a few minutes.

BY THE COURT:

Q Is it one, two, three, four, five, six, what is it?

A A few minutes, maybe six or seven minutes, maybe longer, somewhere in that vicinity.

Q Could it be two minutes?

A No, it would be longer than that.

Q Could it be three minutes?

A I think probably around six or seven minutes would be closer.

Q That is your conception of it?

A Of a few minutes, yes, sir.

THE COURT: All right.

BY MR. JONES:

Q Do you know for what reason or why this demonstration was being held?

A It would be an assumption on my part.

Q Give your answer.

A My assumption was that they were demonstrating because they had twenty-three pickets arrested the day before or two days before, rather.

Q Do you know where were these people arrested who were carrying the pickets the day or so before?

A In front of the stores on Third Street and I believe out on Main Street, in the downtown district and I believe out on Main Street in front of Goudchaux's.

Q Did you see them carrying the pickets?

A I saw some of them.

Q Do you know what the pickets stated or --

A What the signs stated?

Q Yes. What they were saying, what they read.

A Several of them mentioned just not to buy at particular places for various reasons. I didn't read all the signs.

Q I mean the ones that you remember. Some of those various reasons that you have mentioned, what was some of them?

A I couldn't say because I didn't read them.

Q You don't remember at all?

A No.

Q Do you remember whether or not either or any of the signs said: "Have Money, Spend Elsewhere"?

A What was that again?

Q Do you remember whether or not either of the signs which the pickets were carrying the day before, those who were arrested, do you remember whether or not either or any of those pickets read "Have Money, Spend Elsewhere"?

A No, I don't.

THE COURT: I remember seeing one like that in the film.

MR. JONES: You saw one

like that in the film.

THE COURT: Yes.

Q Do you recall whether or not either one of the signs read or any of the signs read "Don't Buy Discrimination for Xmas"?

A I couldn't be positive.

Q Were you present when the tear gas was thrown?

A Yes.

Q Do you know who threw the tear gas?

A What individual?

Q Who threw the tear gas bombs?

A The police did.

Q Do you know the name of the policeman that threw the tear gas bombs?

A No.

Q Did you throw either one of the tear gas bombs?

A Yes.

Q What is your name, sir?

A Captain Jim Dumigan.

Q Do you know any of the other officers by name who threw any of the other tear gas bombs?

A I just didn't pay that much attention.

Q How many of the tear gas bombs were really thrown?

A I didn't count them.

Q Do you know who threw the first tear gas bomb?

A I do not.

Q Did you throw the first tear gas bomb?

A I did not.

Q Did you throw the second?

A I don't know whether I threw the second, third, fourth, the fifth, or what have you.

Q How many tear gas bombs did you throw, sir?

A One.

Q Where was that? Was that on St. Louis Street or Third Street?

A It was at Fifth and Boyd.

Q Did you -- were you present when the police dogs was used?

A No.

Q Did you have any -- that was in charge of any of the police dogs?

A What do you mean?

Q Either one of them. I think you had only two.

A We had had them at Fifth and North Street at one time, and while we were sitting there, they called me on the radio and stated that the merchants or some merchants had called from Third Street and had people in their stores and were unable to do business and asked for any assistance they could possibly get, and I sent the dogs down to Third Street.

Q You were in charge of the dog squad, is that right?

A No.

Q Did you have charge of eight police dogs?

A No.

Q This demonstration on St. Louis Street, on the west side of St. Louis Street,was that on the same side of the street on which the Courthouse is located?

A Across the street.

Q On what side of St. Louis Street is the Courthouse situated or located?

A The east side.

Q Do you have any idea as to the width of St. Louis Street?

A I guess about thirty some odd feet.

Q Did you notice on December 15th, 1961, at the time of the demonstration whether or not there was some people around the Courthouse and in front of the Courthouse congregated that did not form a part of this demonstration?

A There were some people on the east side of the street, yes.

Q Approximately how many?

A Oh, there were approximately, if I were to guess, I would say maybe between one hundred fifty or two hundred.

Q How was that particular crowd on the east side of St. Louis Street on the grounds of the Courthouse, how were they reacting?

A When?

Q During the demonstration on the west side.

A Well, when they were having the program, they didn't make any noise or anything like that, but when they began clapping and hollering, they began to make a little noise.

Q About -- when you say a "little noise," I mean what do you mean? Did they begin hollering back or shouting back?

A Not to any extent, no.

BY THE COURT:

Q When was that?

A That was about the time they began clapping and hollering just before the demonstration was broken up.

BY MR. JONES:

Q Was this crowd on the east side, was their reaction, within your opinion, was it of a violent nature?

A No, I wouldn't say violent.

Q How would you classify it or describe it?

A It was rumblings. That is about the best way I can describe it.

Q Was it rumblings of a hostile nature or a mean, hateful nature?

A That would be a violent crowd.

Q What type of rumbling was it then?

A Oh, just talking back and forth.

Q Do you recall any type of remarks that were made from this crowd on the east side of St. Louis Street and on the Courthouse grounds?

A Most of the time I was down north of the center of the Courthouse near the driveway down here north of the Courthouse.

Q Now, members of this demonstration on the west side, Reverend Cox's group, the Negroes on the other side who were protesting racial segregation, how were they reacting?

A When?

Q At the time you were observing.

A Part of the time they were very orderly and part of the time they weren't.

Q At what time were they orderly and at what time they were not orderly?

A When they first arrived, they were orderly. At the end they were disorderly.

Q And when they were disorderly, in what manner were they disorderly?

A By hollering, screaming, not screaming but hollering loud, clapping their hands.

Q Was this hollering loud and clapping their hands of a jubilant nature as they was happy and making over something?

A They seemed to be making a lot of noise.

Q They didn't seem to be angry or anything, did they?

A No, not angry.

Q Didn't seem to appear that they wanted to fight or do anything of that sort, did they?

A I can't say that.

Q Just what could you say, sir?

A I can say this, that it doesn't take much to get a large group of people started off into a riot. That's true in any place. It doesn't take much of a spark.

Q Did they become disorderly at the time that the tear gas bombs was thrown?

A You mean did they -- I don't understand exactly what you mean.

Q Did they run in all directions excitedly when the tear gas bombs were thrown?

A They ran.

Q How did they run, orderly or disorderly?

A I would say disorderly.

Q Just take this whole demonstration in which Reverend Cox is here being tried. Would you say that that whole demonstration was generally of an orderly nature?

A Generally, yes.

MR. JONES: That's all.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q Mr. Dumigan, as a matter of fact, haven't the press in East Baton Rouge Parish, to your personal knowledge, represented Elton Cox as the undisputed leader of the CORE organization here?

A They have.

Q Has he ever denied that, those statements?

A Not to my knowledge.

Q As a matter of fact, hasn't he made certain statements in the press himself as the field representative of -- Field Secretary of CORE?

A He has.

Q I show you a telegram and ask you if you have seen that before.

A I have.

Q Where did that come from?

A It's a Western Union telegram sent to the Chief of Police.

MR. JONES: I ask that it be read out loud.

MR. PITCHER: Yes, I will be glad to have it done, Johnnie.

Q Would you read that telegram, please, at the request of defense counsel?

A It is addressed to the Chief of Police and it says (Reading): "Negroes understand through the press that if church officials call your office and report that Negroes seek membership in their own denominations you will arrest them. Churches are not private clubs or organizations. They are tax exempt. The Bible says quote whosoever will, let him come unquote. We cannot continue to worship in a segregated church and hope to live eternally in an integrated heaven. Reverend B. Elton Cox, Field Secretary of CORE, Hotel Lincoln, Baton Rouge, Louisiana," dated January 22, 1962.

MR. PITCHER: I ask that that be marked State-5.

Q I show you a clipping from the Baton Rouge newspaper "The Morning Advocate" of January 7, 1962, in which the defendant is quoted as saying that the CORE organization planned a "join-in"for race relations Sunday on February 11th and ask you if you have read that one?

A I have read that one.

Q Would you read it into the record?

A (Reading) "Members of the Congress of Racial Equality will hold a 'join-in' at white churches in Baton Rouge next month, a CORE official said. Rev. B. Elton Cox, Negro, CORE field secretary who told of the impending action in a Saturday night interview, said about 100 Negroes would go to capitol churches in groups of two. The join-in is planned for 'Race Relations Sunday' on February 11, Cox said. Cox, of High Point, North Carolina, said no Protestant churches are integrated in Baton Rouge. He said Catholic churches have Negro worshippers, but they must sit in segregated sections. The join-in is not the same as a 'kneel-in' or the 'pray-in,' Cox said, because participants will be seeking legitimate church membership. It will be the first use of the join-in, said Cox. Meanwhile, Baton Rouge officials were said considering moves to file charges against Cox who claimed CORE demonstrators were beaten in jail here. The High Point, North Carolina, preacher is now free under $6,000 bond on four charges stemming from Negro mass demonstrations in Baton Rouge on December 15 which police broke up with tear gas. Sheriff Bryan Clemmons termed the accusation a cheap publicity stunt and emphatically denied the charges. Friends have reportedly urged Clemmons to institute federal civil action against Cox and CORE for slander and defamation of character. Clemmons said FBI agents began their investigation today of charges by Cox who claimed three CORE leaders had been beaten in the parish jail. 'I welcome the investigation,' Clemmons said, denying anew today any substance to charges by the CORE field secretary. The sheriff said he would wait until the outcome of the FBI investigation before seeking legal remedies against Cox's charges. Also, Baton Rouge Police Chief Wingate White said he has asked the Louisiana Peace Officers Association to request Attorney General Robert Kennedy to file federal charges against Cox and CORE for filing a false report. The FBI in New Orleans confirmed they are investigating the charges at the specific request of the United States Attorney General. The Baton Rouge CORE unit is under a federal court restraining order against further demonstrations. Cox said if the restraining order is made permanent, CORE members would not consider the join-in a violation of the court order. Cox, interviewed at New Orleans International Airport, said he was en route to Talladega, Alabama, where he was scheduled to preach a sermon Sunday at Talladega (Negro) College. He said he would return for trial January 18 at Baton Rouge on charges of conspiracy to influence acts of justice, criminal mischief, disturbing the peace and taking over a lunch counter after being asked to leave by the owner."

MR. PITCHER: I ask that that be marked State-6.

Q I show you the "State-Times" of December 7th and ask you if that is the notice of the meeting at the St. Marks Church that you had reference to?

A Yes, sir.

MR. PITCHER: I ask that that be marked State-7.

Q I show you the exhibit marked --

MR. JONES: I would like for him to read that out, too, please.

Q Would you read State-7 at the request of defense counsel?

A It is headlined "CORE Serves Notice on 12 Baton Rouge Merchants." (Reading): "Negroes today gave twelve Baton Rouge merchants until noon Saturday to reply to requests to desegregate facilities and offer equal job opportunities. The mandate came as members of the Congress on Racial Equality prepared to open a two-day clinic on non-violent tactics. Ronnie Moore, president of the CORE unit here and a Southern University student, said registered letters were sent to the merchants after several attempts to negotiate by telephone failed. Most of the managers happened to be out of town, some were too busy, and others didn't have time to discuss the significance of racial equality, Moore said. They often pointed out the busy Christmas season, he said. I replied, Christmas is a busy season for both buying and selling. The registered letters, he said went to Kress, Goudchaux's, F. W. Woolworth Company, Welsh and Levy's, McCrory's, Sears, Holmes, Three Sisters, J. C. Penney's, Rosenfield's, Shopper's Fair, and Montgomery Ward's. Moore declined to say immediately what would happen if the request for a reply to the group's attempts to negotiate on equality in employment and desegregation were not answered. He said the direct non-violent action clinic at St. Marks Methodist Church at North 14th and Convention Streets here was expected to draw about 150 persons. Those attending, he said, would be students of Southern University interested in the activities of CORE in the area. The clinic will begin at 3:00 p.m. Friday. Sessions will be held until 10:00 p.m. Friday. They will resume at 8:00 a.m. Saturday and continue until 10:00 p.m. Officers of CORE from New Orleans and Shreveport will serve as consultants, Moore said. This will serve as an institute for the training of students and CORE members in the Baton Rouge area for direct non-violent action against racial discrimination. There will be instruction, he said, in freedom rides, sit-in demonstrations and picketing. A temporary restraining order from a federal judge served upon two Negro students here will not affect their participation in the clinic here this weekend, one of the students involved said today. Patricia Tate, who resigned as a student at Southern University several weeks ago, told a reporter that she received a federal court order prohibiting her participating directly or indirectly in further sit-in demonstrations in McComb, Mississippi. It was also reported that Willie Bradford, a Southern University student living on campus, was served with a temporary restraining order prohibiting participation in future McComb, Mississippi, sit-ins. Miss Tate said Bradford was the only other person that she knows of who received a restraining order. The order was signed by U. S. District Judge Sidney C. Mize and forbids the recipients to sponsor, finance or encourage persons to utilize the McComb terminal facilities for the purpose of fomenting violence and provoking breaches of the peace in or near the terminal. The former Southern University student said she resigned from the university several weeks ago so that her scholastic work would not be affected by possible action from the State Board of Education because of her participation in integration activities." Dated Thursday, December 7th, 1961.

MR. PITCHER: I believe I have already asked that it be marked State-7.

Q I show you Exhibit State-2 and ask you how many times the defendant's name appears on that agenda?

A Three times.

THE COURT: It speaks for itself.

Q And that was the meeting held on December the 8th referred to in the story of December 7th?

A The meetings were held December 8th and 9th.

MR. PITCHER: Thank you very much. I tender the witness.

MR. JONES: We have no further questions.

WITNESS EXCUSED

. . . .

(At this time Court recessed for a short time and thereafter reconvened.)

MR. PITCHER: Lieutenant Johnston.

G. L. JOHNSTON, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q State your name, please.

A G. L. Johnston.

Q Where are you employed, Mr. Johnston?

A City of Baton Rouge, Police Department.

Q How long have you been so employed?

A Twelve years.

Q Were you so employed on December 8th and 9th of 1961?

A Yes, sir.

Q I show you a newspaper item marked State-7 and dated Thursday, December 7th, and ask you if you had occasion to read that article concerning CORE?

A Yes, sir.

Q Mr. Johnston, as a result of that news article and on the orders you received from your superior, did you go to the location of the St. Marks Methodist Church at Fourteenth and Convention Street on December 8th or 9th?

A Yes, sir, on the eighth.

Q And what time of day was that you went there?

A Approximately about four o'clock. I don't remember the exact time, but it was somewhere around the vicinity of four o'clock.

Q On that occasion did you see the defendant in this case Elton Cox at that location?

A Yes, sir.

Q Describe to the Court how you came to see him and how you recognized him at that time and now.

A The church sits on the southwest corner of that intersection. I was parked on the northeast corner and my car was facing west. I observed some people coming in and out of the church, and a yellow school bus pulled up on Fourteenth Street heading north, and approximately ten or fifteen people got off of it, and in these ten or fifteen people was Reverend Cox. I didn't know at the time what his name was. He has been pointed out to me since then as Reverend Cox.

Q You saw him on December 15th, did you not?

A I did, on December 15th, yes, sir.

Q You knew who he was on that date?

A Yes, sir.

Q Now, are you certain that that man got out of that school bus at the corner of Fourteenth and Convention at the St. Marks Church on December the 8th?

A He got out and the reason I particularly paid attention to him, most all of them that got off the bus went in the church, and there were still two or three standing on the corner, and Cox walked east on Convention Street across the street to the north side, walked up behind my police car with a pencil and a piece of paper in his hand like he was taking the license number down of my car.

Q Now, do you identify the defendant in this case as that man?

A Right there (indicating the accused B. Elton Cox).

Q Can you tell me approximately how many people were at that meeting on December 8th?

A There was, as far as I know -- I didn't go inside the building, and I don't know whether there was any people there when I got there or not -- but I saw about fifteen or twenty people go in the building, and I saw about twelve or fifteen come out of the building, and it got so dark or the light situation got so bad that I couldn't take any more pictures, so I left.

Q Now, did you participate in the control of the demonstration on December the 15th?

A Not in the control of them. In my job at the Police Department, the fire arms or what you would call the armory is under my section and --

Q In other words, you were not involved in the police cauldron that was out around the Courthouse?

A Not other than issuing tear gas at the Police Station.

Q You did issue the tear gas?

A Yes, sir.

MR. PITCHER: I tender the witness.

CROSS-EXAMINATION

BY MR. JONES:

Q Mr. Johnston, what did you say was your rank?

A Lieutenant.

Q And that is with the City Police?

A That's right.

Q How many tear gas bombs did you issue?

A I have no idea.

Q Was it fifteen?

A It was more than fifteen.

Q Was it thirty?

A I have no idea.

Q Was it more than thirty?

A I still have no idea.

Q Was it more than twenty?

A I didn't count them.

Q How many tear gas bombs were used?

A I have no idea of that either.

Q Was it ten?

A I didn't count how many were used because at that time I don't believe anybody could have counted them.

Q Was it about forty-three?

A You are trying to put a number in my mouth, and I can't say.

Q Do you take inventory of your tear gas bombs?

A Oh, yes.

Q Prior to December 15th how many tear gas bombs did you have in stock or in storage?

A I have no idea how many was in stock prior to that date, and I don't know how many was in stock just after that date, because I didn't count them, because some of the other departments handle their own tear gas, and I might have got some of theirs and they might have got some of mine. I have no way of knowing.

Q If the defendant would testify that about forty-three tear gas bombs was used on December 15th, could you or would you deny that?

A I couldn't deny it and I couldn't affirm it, and I don't believe there is anybody, any human being, could have counted them that day.

Q You don't believe they could have counted them?

A No, I do not.

Q Could account for the number of tear gas bombs that was used?

A No.

Q Why would you testify to that fact, sir?

A Because there was too much confusion going on out there.

Q Was that confusion going on after the throwing of the tear gas bombs or before?

A There was confusion before the tear gas was thrown.

Q But would the confusion before the throwing of the tear gas bombs -- could be attributed to anyone being, not being able to account for the use of the tear gas bombs?

A I don't think the confusion before the tear gas was thrown had anything to do with anybody counting the tear gas.

Q But you do think that after the use of the tear gas bombs or after the throwing of the tear gas bombs that the throwing of the tear gas bombs themselves would be attributed to no one being able to account for it.

A I wouldn't say it attributed to nobody being able to account for it. For at least five or ten minutes prior to that, I don't think anybody would -- anybody could have counted them then unless they went around to each policeman on duty, and I don't know how many police were out there. They would have had to go to the individuals and count them.

Q I am talking about the number of tear gas bombs that were thrown, sir.

MR. PITCHER: Judge, May I interpose an objection on the grounds that it doesn't make any difference how many tear gas bombs were thrown. Everybody admits that tear gas was thrown.

MR. JONES: Your Honor, we are not trying to deny that tear gas bombs was thrown, because it is true that we all admit that the tear gas bombs was thrown, but we are trying to establish the fact that all the disorderly that was caused, was caused by the throwing of the tear gas bombs.

THE COURT: Well, I am going to let you ask him how many were thrown, but if he doesn't know -- I am just going to allow you reasonable cross-examination of him, but you have been on him now five minutes about tear gas bombs, and he says he doesn't know.

Q Did the tear gas bombs cause disorderly, sir, the throwing of the tear gas bombs cause disorderly?

A I wouldn't say it caused any more disorder than was caused prior to the tear gas being thrown. They cleared the area very quickly.

Q How did they clear the area, sir?

A Run.

Q They ran. Did they run orderly or organized?

A I was getting out of the way myself. I didn't pay too much attention to how they was running.

Q Now, when they marched up, sir, in the procession, did you run then, sir?

A No, I didn't.

Q It is your testimony then that they were more orderly at the time they marched up than they were after the throwing of the tear gas bombs?

A I testified that they were, in my opinion, disorderly after the tear gas was thrown, but they were also disorderly prior to the tear gas being thrown.

Q Now, let us take it on a comparative degree as to -- at what time were they more disorderly?

A They were more disorderly prior. There was more confusion after.

Q At the time you were running, were you more confused then or before?

A I wasn't confused at all, and I couldn't run. Anybody out there could outrun me, because they had just taken a cast off my leg.

Q You hobbled away pretty swiftly, is that it, sir?

A No, because I didn't have too far to go, just about fifteen steps.

Q You testified that on December 8th, 1961, you saw Reverend Cox get out of a bus in front of St. Marks Church on the corner of Convention and South Fourteenth Street, is that right, sir?

A That's right -- not South Fourteenth.

Q What is that, North Fourteenth?

A North Fourteenth.

Q North Fourteenth. Did you see him go into the church, sir?

A Did I see him go in the church?

Q Yes, sir.

A Yes, I did.

Q I think you testified that you did not go into the church?

A No.

Q Do you know what activities he took part in after he got inside of the church?

A I can't see through them walls. I had no interest in what was going on in there.

Q You don't know if he went in there to read the Bible or not, do you, sir? You don't know whether he went in there to have a prayer meeting, do you, sir?

A I don't have any idea. He didn't stop to tell me why he was going in there.

Q Did you take any pictures of Reverend Cox getting off the bus?

A Uh-huh.

Q You did?

A Yes.

Q Do you have those pictures with you, sir?

A No.

Q When you took those pictures, for what reasons were you taking those pictures, sir?

A For what reason?

Q Yes, sir.

A I was ordered to do so.

Q From whom did you receive those orders, sir?

A The Chief of Police.

Q Did he state or tell you why he wanted you to take those pictures, sir?

A No, and I didn't question his orders.

THE COURT: Who wanted the pictures?

MR. PITCHER: Chief of Police.

A He didn't tell me who to take them of, he just said to take some if there is any pictures to be taken out there.

Q Do you have those pictures with you, sir?

A No.

Q Are those pictures handy where you could get them, sir?

A You couldn't tell anything about them, counsellor, because, as I said at the beginning of my testimony, the light was so bad out there. With colored pictures you have to have quite a bit of light, and they didn't come out where you could tell who was who.

Q Is it customary just to ordinarily take pictures of people going to church?

A It is customary in my department to take pictures of almost anything in Baton Rouge. I have thousands and thousands of feet of movie film and thousands and thousands and thousands of negatives over there that have been taken of everything in Baton Rouge since I have been over there.

Q Now, for what reason you were at the church to take pictures, sir?

A To observe and take pictures.

Q To observe and take pictures of whom?

A No one, no specific person.

Q Now, this article which you have been shown by Mr. Pitcher, were you familiar with that article at the time you were at the church taking the pictures, sir?

A I had read the article in the paper.

Q Generally, what does that article say, sir?

A Generally, it said notice has been sent to twelve merchants in the Baton Rouge area, and I don't know, in no uncertain terms -- it is headlined, "CORE Serves Notice on 12 Baton Rouge Merchants."

Q Read it.

A (Reading) "Negroes today gave twelve Baton Rouge merchants until noon Saturday to reply to requests to desegregate facilities and offer equal job opportunities. The mandate came as members of the Congress on Racial Equality prepared to open a two-day clinic on non-violent tactics. Ronnie Moore, president of the CORE unit here and a Southern University student, said registered letters were sent to the merchants after several attempts to negotiate by telephone failed. Most of the managers happened to be out of town, some were too busy, and others didn't have time to discuss the significance of racial equality, Moore said. They often pointed out the busy Christmas season, he said. I replied, Christmas is a busy season for both buying and selling. The registered letters, he said, went to Kress, Goudchaux's, F. W. Woolworth Company, Welsh and Levy's, McCrory's, Sears, Holmes, Three Sisters, J. C. Penney's, Rosenfield's, Shopper's Fair, and Montgomery Ward's. Moore declined to say immediately what would happen if the requests for a reply to the group's attempts to negotiate on equality in employment and desegregation were not answered. He said, the 'direct non-violent action clinic' at St. Marks Methodist Church at North 14th and Convention Streets here was expected to draw about 150 persons. Those attending, he said, would be students of Southern University interested in the activities of CORE in the area. The clinic will begin at 3:00 p.m. Friday. Sessions will be held until 10:00 p.m. Friday. They will resume at 8:00 a.m. Saturday and continue until 10:00 p.m. Officers of CORE from New Orleans and Shreveport will serve as consultants, Moore said. This will serve as an institute for the training of students and CORE members in the Baton Rouge area for direct non-violent action against racial discrimination. There will be instruction, he said, in freedom rides, sit-in demonstrations and picketing. A temporary restraining order from a federal judge, served upon two Negro students here, will not affect their participation in the clinic here this weekend, one of the students involved said today. Patricia Tate, who resigned as a student at Southern University several weeks ago, told a reporter that she received a federal court order prohibiting her participating directly or indirectly in further sit-in demonstrations in McComb, Mississippi. It was also reported that Willie Bradford, a Southern University sutdent living on campus, was served with a temporary restraining order prohibiting participation in future McComb, Mississippi, sit-ins. Miss Tate said Bradford was the only other person that she knows of here who received a restraining order. The order was signed by U. S. District Judge Sidney C. Mize and forbids the recipients to sponsor, finance or encourage persons to utilize the McComb terminal facilities for purpose of fomenting violence and provoking breachers of the peace in or near the terminal. The former Southern University student said she resigned from the university several weeks ago so that her scholastic work would not be affected by possible action from the State Board of Education because of her participation in integration activities.

Q Mr. Johnston, that article is dated when?

A Thursday, December 7th, 1961.

Q And that was December 8th, 1961, you was at St. Marks Church taking the pictures, is that right, sir?

A That's right.

Q That article made, did it not particular reference to protesting racial segregation or racial discrimination, did it not, sir? Did that article make particular reference to that, sir?

A According -- I mean equal opportunities in the stores is what I got out of it. It didn't say anything about racial segregation. It said equal opportunities for employment in the stores.

Q You don't recall the word "racial discrimination" anywhere in the article near the bottom, sir? Just about the second or third paragraph from the bottom.

MR. PITCHER: Judge, we will admit that the article says "racial discrimination" and "protesting."

THE COURT: Do you see it?

A I don't see it, Judge. It says in one here "will serve as an institute for the training of students and CORE members in the Baton Rouge area for direct non-violent action against racial discrimination."

Q Against racial segregation?

A It doesn't say "segregation." It says "discrimination."

Q That was dated December 7th, 1961, is that right, sir?

A According to the date on the paper, that is what it said.

Q December the 8th, 1961, you took pictures of the defendant here, Reverend Cox, going into St. Marks Church, is that right, sir?

A I didn't say I took pictures of him going into the church.

Q Where did you take the pictures, sir?

A Standing by the bus.

Q Was that near the St. Marks Church on the corner of North Fourteenth and Convention?

A Just across the street.

Q On December 15th, 1961, is that the date of the demonstration, sir?

A December 15th, yes.

Q That was the time that they marched downtown here in protest of racial segregation, did they not, sir?

A Nobody told me what they were protesting. I didn't ask anybody and they didn't tell me. No one told me what they were protesting. I didn't ask anybody and nobody volunteered the information to me.

Q Now, Mr. Johnston, sir, generally, all the activities of CORE and its representatives had been announced by the news media prior all along, had they not, sir, all along?

A I don't know whether all the activities were announced in the newspaper or not, because I don't know what all their activities were.

Q Those that you know of, weren't they announced in the news media?

A The only one that I know of, that I particularly know of, is this one here that they were going to have a meeting at South Fourteenth and Convention Street or at North Fourteenth and Convention Street.

Q And that announcement says that they were engaging in activities generally to protest racial segregation or discrimination?

A It said they were going to hold a school out there.

Q For what purpose were they holding the school, sir?

A For the purpose of teaching them how to freedom ride, sit-in demonstrations and picketing.

Q For what purpose were they teaching them how to have sit-in demonstrations, picketing and freedom rides?

MR. PITCHER: If Your Honor Please, I object, because the witness couldn't possibly know except for what's in the article. He's not a member of CORE and doesn't know what their objectives were.

MR. JONES: The article states, Your Honor.

MR. PITCHER: The article speaks for itself.

THE COURT: Have we read the article in the paper?

MR. JONES: Yes, Your Honor.

MR. PITCHER: Twice.

THE COURT: All right. That's enough about the article. It speaks for itself.

Q Now, you observed this protest of discrimination in front of the Courthouse, did you not, sir, on the opposite side of the Courthouse?

A I did.

Q Within your opinion, generally, was it an orderly demonstration or protest?

A They was marching orderly to start with, but I wouldn't say it was orderly thereafter.

Q Was it orderly at the time and just after the throwing of the tear gas bombs?

A No, not in my opinion it wasn't.

MR. JONES: That's all.

MR. PITCHER: Thank you, Mr. Johnston.

MR. WARD: One question.

REDIRECT EXAMINATION

BY MR. WARD:

Q Mr. Johnston, with respect to the last question you were asked by counsel for defendant, did the demonstration become disorderly prior to the use of any tear gas and prior to any request on the part of the Sheriff that they disperse?

A It did.

MR. WARD: That's all.

MR. PITCHER: That's all.

MR. JONES: One more question.

RECROSS-EXAMINATION

BY MR. JONES:

Q What did they do that was disorderly just prior to the throwing of the tear gas bombs? Describe it.

A Reverend Cox, if he is a Reverend, I don't know, but he was talking to them, making a speech or telling them, and he told them that it was noon, to go downtown, the stores had twenty counters, nineteen of them their money was welcome, the twentieth their money wasn't welcome, to sit down, tell them they are hungry, if they don't feed you, sit there one hour and then get up and leave. There was a great roar from the crowd, clapping of hands and shouting, and then there was some singing emanted from the fourth floor of the Courthouse which is the jail. I don't know where it was coming from, but it was singing, and then we got another big roar and clapping of the hands, generally yelling and general, what I would call, being disorderly, and at that time the Sheriff got the microphone, identified himself, the Chief of Police and the Mayor-President of the City of Baton Rouge and asked them to disband, and I didn't see anybody making no move to disband. Then he asked them again.

Q Did they make a move to disband when the tear gas bombs were thrown?

A They didn't make a move, they cleared the area pretty quick.

(There was an outburst in the courtroom.)

THE COURT: All right. Let's don't laugh in court. I will put you all out of here if I hear any more laughing.

Q At the time that they were protesting and assembled on the west side of St. Louis Street, do you know whether or not that fourteen of the members of CORE were arrested for picketing?

Q Do you know whether or not a trial of any of the members of CORE or any of the members of Reverend Cox's organization which was protesting racial segregation was on trial or being tried in this Court at that time?

A At the time of the demonstration?

Q Yes, sir.

A I have no idea. I am not an officer of the Court nor of the District Attorney's office. I don't know who was being tried or who wasn't being tried.

Q Have you read in the papers that any of them had been arrested for picketing?

A Arrested for picketing?

Q Yes.

A Oh, I knew they had been picketing. They had been arrested for picketing the day before or two days before.

Q Had you read in the paper that any of them was going on trial on December 15th, 1961?

A No, I hadn't read in the paper that they were going on trial. I knew there was some in jail. I couldn't tell you how many, because I was there when some of them were arrested.

Q Did you read in the paper that any of them were going to be arraigned in Criminal Court of the Nineteenth Judicial District Court on that day?

A No, I didn't read in the paper, and I wasn't informed of the fact. There is a lot of things that go on in the courts that they don't see fit to inform me of.

Q I mean had you read it in the paper, sir?

A No.

Q Had you heard it over the radio?

A I very seldom get a chance to listen to any radio except the police radio.

Q Any form of news media including TV?

A No.

Q To the best of your knowledge, you knew of none of them being on trial that were arrested on December the 14th or 15th, did you?

A No, I don't know if any of them was on trial at that time, no.

MR. PITCHER: If Your Honor Please, I am going to object to this line of questioning for this reason. According to counsel himself, these people were arrested on the 14th of December, and I can assure him they will get tried just as fast as I can get around to it.

MR. JONES: Yes, sir, Your Honor, but --

THE COURT: What difference does it make whether he knew it or not, Mr. Jones?

MR. JONES: Your Honor, he is being tried under 14:401 as well, and under 14:401, he is being charged for influencing the judges, justices and other court attaches by this demonstration. Now, what we are trying to establish here, and we don't mind saying it, that if the trial wasn't going on and the demonstration wasn't going on, I would like to know how could a judge or any court attache have been influenced by the demonstration?

THE COURT: Well, you can use that in the argument either based on the lack of evidence or the direct evidence you put on. Now, this man here -- you want to prove that there was no trial going on by him?

MR. JONES: We want to establish that --

THE COURT: Would it satisfy you if the District Attorney stipulated that there was no trial going on --

MR. JONES: Yes, sir, that would suit me fine.

MR. PITCHER: I will be happy to so stipulate. The stipulation should include this statement. There was no trial going on at the time of this demonstration, but that there were twenty-three colored people who had been arrested the day before for picketing, and that they were at that time incarcerated in the East Baton Rouge Parish Jail on the fourth floor of the Courthouse within one hundred feet of where this demonstration took place.

MR. JONES: And would you

have the stipulation to specifically state that they were not being tried --

MR. PITCHER: I just said that.

MR. JONES: -- they were not being arraigned, and that no other activity other than incarceration was being carried on?

MR. PITCHER: And were awaiting arraignment and trial.

THE COURT: All right. That ought to take care of everything. Let's get on something else.

MR. PITCHER: We call Your Honor's attention to the lack of any remarks about trial or arraignment in that article.

MR. JONES: Beg pardon? I didn't get the significance of any of that.

THE COURT: Well, he is calling to my attention the fact that there is no mention in the article of arraignment or trial, but it is probably argument, and we will wait until after the evidence is adduced to have argument.

MR. JONES: That's all.

MR. PITCHER: Thank you, Mr. Johnston.

WITNESS EXCUSED

. . . .

MR. PITCHER: Call Miss Vay Carpenter.

MISS VAY CARPENTER, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q You are Miss Vay Carpenter?

A Yes.

Q Where are you employed, Miss Carpenter?

A Hynes and Lane.

Q The law firm of Hynes and Lane. Where is that office located?

A 214 St. Louis Street.

Q Is that directly across the street from the East Baton Rouge Courthouse?

A Yes, sir.

Q Were you so employed on December 15, 1961?

A Yes, sir.

Q Did you see anything unusual that day in front of your office approximately noon, and if so, describe what you saw to the Court in your own words, please, ma'am, and just what you did and how you felt?

A Well, I saw a gathering of a group of, I don't know exactly how many, but the sidewalks were full six to eight deep as far as I could see on each side of the office, and they were colored people. They were very orderly when they marched down the street. I stood in the door and I watched. I listened to everything that went on.

Q When you say you listened to everything that went on, what do you mean? What did go on? Were there any speeches made?

A There were speeches. There was a leader.

Q Who was the leader?

A Uh --

Q Do you see him sitting in this courtroom?

A (The witness indicated the accused B. Elton Cox.)

Q Are you pointing out Elton Cox, the defendant?

A That's who it was.

Q All right, go right ahead. He made a speech?

A Well, he started out with it was going to be a peaceful demonstration. We stood in the door and watched. We listened to the songs, we listened to his saying that they were there in protest of the men or people who were in jail --

Q You heard him say they were there in protest of the people who were in jail?

A Yes.

Q Go right ahead.

A The demonstration went, like I said, peacefully for a while, and then cheers came from up in the jail, down on the street, and then he went into a speech about we are going to the lunch counters and so forth, and when he started into that speech, the whole mood, the whole everything of the crowd, his speech, everything changed. I was standing at the door with another girl in the office, and at that time, I told her, I said, "Oh, oh, here comes the trouble, let's --"

Q You felt the tension build at that time, is that right?

A Yes, and not until he started his speech and the yells from the Courthouse.

Q Did you hear the Sheriff make any comments?

A Yes. After his speech, the Sheriff took the microphone and said, "This has ceased to be a peaceful demonstration," and at that time we closed the door and got inside and locked it.

Q Were you frightened then, Miss Carpenter?

A Certainly I was frightened.

Q Now, that office is directly across the street from the Courthouse, and I believe you said that the sidewalks were crowded with colored people?

A Yes, sir.

Q And that Cox, the defendant here, was the man in charge of making the speech?

A Very definitely.

Q And I believe you testified it was a very peaceful gathering --

A Up to a point.

Q And that point was when he made his inflammatory speech about the lunch counters, is that it?

A Right.

Q And then you could feel the atmosphere change?

A You could feel the tension. You could see his mood. You could see him change in a sense.

Q In other words, he changed from a preacher then to a different type of person.

THE COURT: Let her describe him.

A Well, it changed from a peaceful demonstration to a forceful --

BY THE COURT:

Q What made you feel as you felt? What made you feel this apprehension about him? What did you notice about him that made you feel this way?

A Well, up until this point, he was very relaxed and calm, and like I said, peaceful, but when he started this speech, he himself -- I was standing very close -- he himself changed, just everything about him is all I can say.

Q Did you notice any change in his voice?

A Yes, that is what I say. He became more forceful. He became -- I don't know just how to say it, but you could just feel everything change.

Q What did you notice different about the crowd at that time?

A Well, they grew tense, too, and after his speech, they gave this wild cheer or yell, and that's when we got back inside.

Q You described them as being orderly when they first came --

A Yes. Yes, the crowd, everything, like I said, was orderly up to a point.

Q And by orderly, you mean what?

A Well, they were quiet, they were -- I saw him lining them up six and eight deep on the sidewalk. They marched shoulder to shoulder on the sidewalk and as far as I could see on each side of the office.

Q After they first got -- rather, after the time you saw them marching, -- first of all, tell me where you were stationed with regard to the block. Where is the building that you are in with regard to the block?

A My building is right in front of the steps of the Courthouse.

Q And with regard to the block where you are situated, where would you say you are located, in the center, three-quarters of the way or --

A I would say close to the center right in the center of the block.

Q And how much distance is it between the sidewalk and the steps?

A Oh, I guess, three feet.

Q And describe how they were after they had finished marching in front of your place.

A They were six to eight deep, people deep, from the sidewalk from the side of the street back towards my office.

Q Were there any off the sidewalk and on the property of the building that you were situated in?

A Yes, a few.

Q Which direction were they facing?

A They were facing the Courthouse.

Q And how would you describe their manner and attitude at that time?

A At that time when they first marched up, they were peaceful, orderly, I would say.

Q And when, in your opinion, again, did they become disorderly?

A They became disorderly after the cheer from the jail and the cheer that the people on the street responded, and when he started making his speech about going to the different lunch counters. Then is when you could feel the tension building.

THE COURT: All right.

BY MR. PITCHER:

Q Miss Carpenter, would you say Cox's attitude changed from one of passiveness to aggressiveness at that time?

A Yes, very definitely.

MR. PITCHER: Thank you, ma'am. Your witness.

CROSS-EXAMINATION

BY MR. JONES:

Q Miss Carpenter, did Reverend Cox make any statement that was hostile within your opinion or one of a vicious nature?

A I think his whole mood was vicious, his whole nature at that particular -- in that particular speech was vicious. It had a motive behind it, I would say.

Q What would you say that motive was?

A What the motive was I don't know, but you could feel it.

Q Within your opinion the whole movement was vicious?

A I didn't say the whole movement. I said it was peaceful up to a point.

Q Now, at the time that he made the statement to go to the lunch counters and eat, was that a vicious statement within your opinion?

A The way he said it, yes.

Q What he said, was that vicious?

A Well, I can't explain anything -- you asked me to express my feelings?

Q Yes, ma'am.

A I can't explain anything that would say it was vicious other than I could feel the tenseness in the air, see the difference in the way he was speaking, even in the way his body moved, everything about him changed. Therefore, it made everyone else change.

Q Now, did you hear him in his speech make the statement if anyone spit upon you, do not spit back; if you are hit, do not hit back? Did you hear him make that statement?

A Would you repeat that?

Q Did you hear him make the statement in his speech, if you are spit upon, do not spit back; if you are hit, do not hit back? Did you hear him make that statement?

A I think so.

Q Within that statement was there anything calculated to create excitement, alarm, fear or apprehension, on your part?

A No, but this was before he started his speech about the lunch counters.

Q Then was that part of his speech satisfactory within your opinion to not have within it anything of a vicious nature?

A Yes, like I said, it was a very peaceful demonstration up to a point.

Q When did you move out of your door? You stood in your door, I think you testified?

A That's right.

Q Were you down on the street or up in the door?

A No, I was standing in the office with the door open.

Q When did you move out of the door?

A When he started his speech about the lunch counters, and I could feel the tenseness in the air, and at that point, I told the girl next to me, I said, "Well, here comes the trouble," and we moved back in the office and locked the door.

Q When he made his speech about the lunch counters, what was the reaction of those who were protesting out there?

A Well, if I am not mistaken, when he -- after he finished his speech, there was a large cheer and yell.

Q Was it of a jubilant or of a violent nature?

A Well, it sounded like a rather wild yell to me.

Q Could you describe it as a person cheering one of his teammates crossing a goal line or one of his roommates crossing the goal line at a football game?

A No. I would describe it as -- all the people who were standing there had more or less felt the same tension that I felt, the same reaction that I had, had taken hold of them as well as me, and when I got in and closed the door, they didn't have that choice, they stood there yelling.

Q Were they clapping their hands?

A No, I can't say that they were clapping -- all I heard was yelling.

Q Could it ~~be~~ a yell that could be likened unto the cheering of the old year out and the new year in?

A No, as I told you before, it sounded like a wild yell.

Q Now, how wide did you say the sidewalk in front of your office on the west side of St. Louis Street --

A I don't know exactly how wide it is.

Q Approximately.

A In feet?

Q Yes, ma'am.

A It's just a regular sidewalk a little wider than the ordinary sidewalk I guess.

Q Could it be approximately six feet wide?

A Yes, I would say it is six feet wide.

Q Would it be six feet wide?

A I think so, yes.

Q Could it be eight feet wide?

MR. PITCHER: If Your Honor Please, in an effort to save time, I can assure counsel now that we have a drawing of the entire area with the measurements correctly made, and we will present it for you.

MR. JONES: And we would like to make the measurements, Your Honor.

MR. PITCHER: We have got them, I mean --

MR. JONES: It is right across the street and we would like to take the measurements.

MR. PITCHER: We have taken them.

THE COURT: You can prove the sidewalk by somebody who is more competent to tell you what it is, like someone who measured it.

Q Now, when they were lined up, I think you testified that they lined up six deep? Is that right, approximately?

A Approximately.

Q Could it have been less than six deep?

A No, I don't believe it was less than six deep.

Q When they lined up six deep, was they lined up from the curbing westward, facing immediately on the curbing or the --

A They were lined up along the curb facing the Courthouse.

MR. PITCHER: If Your

Honor Please, counsel has attempted to put words in the lady's mouth quite frequently, but now he is testifying as to lined up six deep, and I certainly don't recall her testimony as being only six deep. She said "six to eight," and if you will ask her to be a little more specific, I have no objection, but I don't like him saying there were six of them out there when the pictures themselves --

THE COURT: He is entitled to fair cross-examination on that. Go on.

Q When they lined up, were they lined up from the curbing westward?

A Yes.

Q In this line, how were they facing, were they facing eastward or westward or northward or southward?

A They were facing the Courthouse.

Q And then from that you mean they were facing eastward, is that right?

A Yes, I guess.

Q Beg pardon?

A Yes, I guess.

BY THE COURT:

Q Do you recall what songs they were singing?

A They sang -- they said the Lord's prayer and they sang --

MR. JONES: A little louder, please, ma'am.

A They sang the Lord's prayer and they sang another song about the black and white together, the name of it I don't know. I don't know if they sang any more or not.

Q You just remember two songs?

A I remember they had the Lord's prayer and they sang this black and white together song.

BY MR. JONES:

Q Did they give allegiance to the flag as far as you know?

A I don't think so.

Q Did you notice on the west side of St. Louis Street, and that is the side of St. Louis Street on which the Courthouse is located, did you notice a crowd of people gathered over there on that side on the east side of St. Louis Street?

A On the side of the Courthouse?

Q Yes, ma'am, on the same side as the Courthouse.

A At first I would say there weren't many people. As the crowd gathered on one side, a few gathered on the other.

Q About how many gathered on the east side of St. Louis Street and immediately on the Courthouse grounds?

A I am not very good at counting, but I would guess about fifty.

Q Did you notice the reaction of that crowd?

A Yes, I guess I did.

Q Describe their reaction.

A Well, I think that they just were there, like I was, just looking.

Q Did they seem to be afraid or intimidated or frightened?

A No, maybe not.

Q Beg pardon?

A I don't know. I wasn't standing over there.

Q From what you observed from where you were standing, did you notice them to be frightened or intimidated or anything of that sort?

A No.

Q Generally, would you say that this protest demonstration was orderly?

A Yes, I said it was orderly up to a point.

Q Did you observe the throwing of the tear gas bombs?

A No, I was in my office at that time.

THE COURT: All right, let's

get on.

Q Now, after they had lined up in front of your office or the office in which you are employed, from the curbing westward on the sidewalk of St. Louis Street, did this group that was lined up six or eight deep, as the case may be, occupy this sidewalk all the way back to your building and against the door in which you were standing?

A Not against the door in which I was standing. They were a matter of two feet, I guess, from it, from the steps where I was standing and what wasn't filled by standing people was filled by milling people.

Q People who was passing --

A No. No, not people were passing, people in the demonstration that were walking back and forth.

Q Then it is your testimony that between the building, or particularly the building in which you were standing, and the people who were standing facing eastward on the -- from the west side of St. Louis Street, there was about two feet of sidewalk left between the steps and them?

A No, I wouldn't, because, like I said the people in the demonstration were milling.

Q I am talking about the ones who were standing.

A The ones who were standing?

Q Yes, ma'am.

A Standing still, stationary?

Q Yes, ma'am.

A There was maybe a foot or a foot and a half left.

Q And they were milling and walking backwards and forwards, and you --

A No, no, not all were milling.

Q I mean some was standing and some was milling.

A Right.

Q Is that right? And those milling was not standing?

A Right.

Q And those milling was utilizing the sidewalk by walking backwards and forwards, is that right?

A Now, the way my office is situated --

Q Yes, ma'am.

A -- and the way I was standing in the door, I could not see -- the office comes out and back -- from where the door stopped there, I could not see back from where my office is, it comes in about six or eight feet in front of our office and Mr. Brown's office. Now, that is where the room was and where they were milling.

Q And those milling were walking backwards and forwards up and down there, is that right?

A Yes.

Q Now, out of those that was milling, are you sure of your own personal knowledge, could you --

A I would think so, yes.

Q You would think so?

A Because they were the same ones milling up and down.

Q Now, where these were milling, where they was walking up and down the sidewalk, there was space --

A You misunderstood. I say I could not see other than right in front of our office, and it is back. It is set back six or eight feet, I guess. That part I could see. The rest of the sidewalk and down I could not see. I don't know whether they were lined up right to the door or not, to the edge of the building.

Q But where you were standing, they were not lined up right up to your door, is that your testimony?

BY THE COURT:

Q That door is some six feet back, isn't it?

A That's right.

MR. PITCHER: I am going to show her that.

BY MR. JONES:

Q And that's your testimony, that they weren't lined up right to your door, is that right?

A Yes, but my door is set back. That is what I am trying to explain.

Q I understand that. Yes, ma'am.

MR. JONES: That's all.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q I am not an artist, but maybe I can explain it a little bit so the Judge and counsel and I can understand it. This is America Street (indicating)?

A Right.

Q Looking at your office building from the Courthouse?

A Right.

Q This building on the corner used to be an old flower shop, didn't it? I mean ever what it was, and this is the offset street that goes through the police parking lot?

A Yes.

Q Now, does this give a fair demonstration of the way your building is situated? In other words, coming down this would be Mr. Hynes' old office, now Mr. Lane's office (indicating)?

A That's right.

Q With windows on the street?

A That's right.

Q And you get here is an offset or insert or whatever you want to call it that goes in like this with a door opening to the right (indicating), isn't that correct?

A Yes.

Q And then it comes out like this and back down is a little brick facade or whatever you call it right here, and this is the office where Miss O'Brien sits now (indicating)?

A Right.

Q And this is -- Mr. Hynes's office is in the back, but would you say that the offset -- this is the sidewalk and this is the street -- would you say that the people who were in this demonstration -- did I understand you to say that some of them were backed up into this offset?

A Yes, milling around in the offset.

Q Milling around in the offset. There was no way for you to tell or not whether they were packed solid against your wall on either side, is that right?

A Right.

Q In other words again, when they were off milling around in front of your door, they were on private property then, were they not?

A I guess.

Q What?

A Yes.

Q In other words, the sidewalk line, a continuation of the sidewalk line from the corner straight on down to Louisiana Avenue would go like this, would it not?

A That's right.

Q And it would be the offset where your doorway leads into the building approximately six to eight feet offset?

A That's right.

MR. PITCHER: Thank you, ma'am.

MR. JONES: One more question.

RECROSS-EXAMINATION

BY MR. JONES:

Q You testified that you work for a law firm?

A Yes.

Q What law firm is that?

A Hynes and Lane.

Q Isn't that office open to the public?

A Yes.

Q Is that the way the public would use to come into that office?

A Yes, that's our front door.

Q And this offset that Mr. Pitcher, the District Attorney has just shown you is the entrance to the sidewalk or the threshhold to your office, is it not?

A That's right.

Q And that is for public utilization, is that right?

A That's right.

MR. JONES: Thank you, ma'am.

MR. PITCHER: Thank you very much, Miss Carpenter.

WITNESS EXCUSED

. . . .

MR. PITCHER: Kermit Guidroz, please.

MR. JONES: If Your Honor Please, I wish to insist upon a measurement of the sidewalk.

MR. PITCHER: You don't have to insist upon it. I have already told you we have got it, counsel, and I will be happy to produce it here today.

MR. JONES: I also want to take a measurement of six, seven of them lined up behind them and see how far back it would take six persons and see whether or not those six --

MR. PITCHER: If Your Honor Please, I am certainly going to object to that. You have seen the pictures. You saw exactly what happened out there.

THE COURT: If you want to bring in that evidence, you will have the opportunity to do it.

MR. JONES: Yes, sir.

KERMIT B. GUIDROZ, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q State your name, please.

A Kermit B. Guidroz.

Q What is your occupation and profession, Mr. Guidroz?

A I am a lawyer.

Q Where is your office located?

A At 208 St. Louis Street directly across from this Courthouse.

Q Was your office so located on December 15th, 1961?

A It was.

Q Where were you on that morning, Mr. Guidroz?

A On that morning I had gone to Livingston Parish Courthouse in Louisiana on some legal matters at that Courthouse, and I returned to Baton Rouge about 11:30 that same morning.

Q What did you hear or did you hear anything on the radio with regard to demonstrations occurring in East Baton Rouge Parish?

MR. JONES: I object, Your Honor, on the grounds it's hearsay.

THE COURT: The fact that he heard it is not hearsay, because he knows what he heard.

A Yes, sir, I heard on the radio that there was a demonstration on the mall on Third Street and on the sidewalks and that it consisted of Negroes in large numbers estimated to be over a thousand and that they were headed toward North Boulevard, which was in the direction of my office, and that the demonstrators were -- the words that were used were that they were demonstrating on the streets of Baton Rouge and that they were headed toward the Courthouse.

Q What did you do as a result of that information?

A Well, my office being directly across the street from the Courthouse and my office being so physically set up that its main entrance, its only entrance on the street being right on the ground, right on the sidewalk, I picked up the telephone and called my secretary to find out what was going on and after talking to her, being fearful that some physical injury could come to her, I told her to lock the office and leave the office.

Q Was that prior to the demonstration starting in front of the Courthouse?

A Well, that was, insofar as I know, it was prior, because she told me they had not actually started any demonstration in front of the office but that she could see them at North Boulevard coming toward the office and that there were a lot of police officers around.

Q Did you ever go to your office on that day?

A No, sir, I didn't. After telling her to leave the office, I called back again about 12:30 and I got no answer and then I called again about a quarter to one or ten minutes to one and I got no answer, and of course, I was listening to the radio all the time and knew what was going on, so I was apprehensive about going down myself, because I didn't want to get involved in any mob or demonstration.

Q Well, then, would you say that a fair appraisal of your actions was caused by the demonstrators in front of your office?

A Nothing else. I would say this, that I just didn't want to get involved in any demonstration. I didn't want to be interfered with, and I didn't want to get hurt, so I figured I had better get away. I didn't go back to my office at all that day. In fact, my secretary called me back, not from the office but from somewhere else, I don't recall now where she was, but told me not to come back to the office because there had been some trouble and the office was full of tear gas.

MR. PITCHER: That's it. Your witness.

CROSS-EXAMINATION

BY MR. JONES:

Q Mr. Guidroz, is that right?

A Yes.

Q What is your type of business?

A I am a lawyer.

Q And your secretary called you back from some place, you say?

A Yes, other than the office.

Q And told you there had been some type of trouble?

A That's right, a disturbance is what she said.

Q What type of trouble or disturbance did she say there was?

A She said there was milling in the streets by Negro demonstrators and that there had been some tear gas thrown to break up some demonstrations.

Q Now, I think you testified that you instructed her to leave the office for fear of any harm that may befall her?

A Yes.

Q Did any harm befall her or anyone else in that neighborhood physically?

A Not that I know of. Not that I know of personally.

Q When this demonstration or protesting group had disseminated or broken up, did your secretary come back to the office?

A I can't say that she didn't come back at all that day, but she didn't do any work that day.

Q And why did she work then if you weren't there?

A What's that?

Q Why didn't she do work later on that day?

A I say she did not, though she had plenty to do. Just because I am not at the office doesn't mean she doesn't have to work.

Q Why didn't she come back and do that work?

A I can't answer that. I don't know, except that I had told her to get away.

Q Had you not testified that she was not able to work in the office that evening?

A Oh, yes, the office was full of tear gas.

Q She wasn't able -- she did not work that evening because of the demonstration that had taken place?

A Well, for several hours she didn't because of the demonstration, because I had told her to get out of the office for fear that something could happen to her. After the demonstration was over, she couldn't have done any work in the office if she had wanted to because of the tear gas in the office.

Q Did your secretary tell you who used the tear gas?

A No, she said that there was tear gas in the office.

Q Now, do you know whether or not your secretary left the office because you instructed her to leave or she left it because she could not stay in the tear gas?

A I couldn't answer that. I don't know. I know I told her to leave.

Q Isn't it true that your entire testimony is based on hearsay, isn't that right, what she told you?

A My testimony is based on what she told me about what was going on and about what I heard on the radio, but my testimony about my telling her to leave or my fear and apprehension for her safety is not based on any hearsay. It is based on what I felt for her safety.

Q But other than you instructing her or telling her to leave, it is all what she told you, isn't that right?

A Right.

Q Other than that, excluding that?

A That's right.

Q None of the rest of your testimony do you know of your own personal knowledge?

A I didn't see any of this except on television several days later. I didn't come down because I didn't want to get involved in it.

Q Do you know whether or not your secretary had been called to testify here today?

A No, sir, I don't know.

MR. JONES: That's all.

THE COURT: Any other questions?

MR. PITCHER: One question.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q Your secretary, I believe, did leave the office on your instructions prior to the beginning of this demonstration?

A So far as I understand, she did.

Q She didn't see anything then that she could testify about so far as you know?

A She has told me that.

Q Good.

MR. PITCHER: That's all.

WITNESS EXCUSED

. . . .

MR. PITCHER: Call Miss Mary O'Brien.

(At this time court recessed for a short time and thereafter reconvened.)

MISS MARY O'BRIEN, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q Your name is Mary O'Brien?

A Yes, sir.

Q Where are you employed, Miss O'Brien?

A Hynes and Lane, attorneys.

Q Where is their office located?

A 214 St. Louis, right across the street.

Q From the Courthouse?

A Yes, sir.

Q Were you so employed on December 15th, 1961?

A I was.

Q Do you recall anything unusual happening on that date in front of your office and between the Courthouse at approximately noon or thereabouts on December 15th?

A Yes, I certainly do.

Q Would you explain to the Court in your own words just what happened, please, ma'am, and how you felt about it?

A Well, all during the morning we heard quite a commotion over at the Courthouse, seemed like it was coming from the jail. There was singing and yelling and sort of a clanging noise.

Q Would you speak a little louder, please, if you don't mind?

A My office is right next to the sidewalk in the front and during the morning I heard quite a commotion from the Courthouse, presumably from the jail. There was singing and clanging and yelling, and then around noon or close to noon, well, we saw policemen lined up on this side of the street --

Q When you say "this side," you mean the east side by the Courthouse?

A Yes, sir.

Q Go right ahead.

A Well, on the west side --

Q You are on the west side of St. Louis. Go ahead.

A And then there was quite a congregation of people that came down there, and they were standing five deep on our sidewalk all along the block.

Q Now, you say "five deep," did you count them or would you say they were blocking the sidewalk?

A There were at least that many, because it took up the entire sidewalk, and the sidewalk comes right to our door except for just a little walkway that comes to it.

Q Was there -- were you standing in the doorway looking, Miss O'Brien?

A Yes, I was watching it from the door.

Q I have a drawn a little map here. As I say, I am not an artist, but this is America Street on the north of your building, and this is Mr. Guidroz' office, used to be that old flower shop, and this is that road that comes in right here by the police, and this is St. Louis Street (indicating). Now, does this drawing fairly indicate the appearance of your building from the sidewalk? In other words, the sidewalk comes down with an offset like that?

A Yes, this is the front door and my office is right there (indicating).

Q Your office is right here (indicating)?

A Yes, sir, right here.

Q Now, as I understand your testimony, you were looking out of the door at the time the demonstration was going on?

A Yes, sir, I was at the front door.

Q Did you see the person who was apparently in charge of this demonstration?

A Yes, sir.

Q Do you see him sitting at the counsel table now?

A Yes, sir.

Q Where is he?

A Down at the end (indicating the accused B. Elton Cox).

Q Now, what did he do, Miss O'Brien, during this demonstration? I mean do you recall any speeches or any remarks that he made?

A He had a speech and then they sang and they said the Lord's prayer. They sang "God Bless America," and they took off their hats and looked up at the flag for some six seconds or something like that, the flags on the building, and he talked -- I don't know for how long -- for two minutes or something like that.

Q Were you frightened at this time?

A I was shaky, yes, sir.

Q Did you hear the defendant make a speech with reference to lunch counters?

A Yes, sir, I did.

Q What did you hear him say?

A Toward the end of it, he looked at his watch and said it was lunch time and that there were, I believe, nineteen different lunch counters where they could go to have their lunch --

Q What did the crowd do in response to that remark, if anything?

A They yelled and screamed.

Q Now, did you see the Sheriff of the parish out there at the time?

A Yes, sir.

Q Did you hear him say anything about that time?

A Yes, sir, he had a megaphone, and he told the crowd, he said, "You have had your little demonstration," and he said, "It has been peaceful and now it is beginning to be a disturbance of the peace," and he said, "Break it up."

Q Did they break it up or did you go back into the office at that time?

A Well, when this man started this talk about the lunch counters, well, we closed our door and locked it and locked the back door, because we were afraid something would happen.

Q In other words, you were in fear at that time?

A Very definitely.

Q Would you say this was a peaceful demonstration when it started?

A Yes, when it started.

Q Would you say it was a peaceful demonstration until just prior to the time that they broke up?

A No, not at all.

Q When did it change? When did the atmosphere change, Miss O'Brien?

A When he started talking about the lunch counters and for them to go and stay there for an hour.

Q For how long?

A An hour.

Q He told them to go and stay at these lunch counters for an hour?

A To stay there for an hour.

Q Was that when you all closed and locked your door?

A Yes, because the atmosphere was tense, it was --

Q Now, you say that these people were -- when you looked out your door, would you say the sidewalk was completely full of these demonstrators?

A Yes, sir.

Q And had any of them backed up into this little area here where this office door is?

A They were mostly just all covering the sidewalk, and they didn't back into there until later.

Q When you say "later," what do you mean?

A At the end of it just before they broke up or at the time that they were breaking up.

Q Was your door open then or was it closed?

A It was locked.

Q Were you looking out the window?

A Yes, sir.

Q Did you see the tear gas bombs going off?

A Yes, sir.

Q And you saw these demonstrators take off on a dead run?

A Yes, I thought they were going to break into our office.

Q You thought they were going to break into your office?

A Yes.

Q Did that make you more apprehensive?

A Yes, sir.

Q I suppose you were kind of glad when this thing was over?

A Very much. I have never seen anything like it.

MR. PITCHER: I tender the witness.

CROSS-EXAMINATION

BY MR. JONES:

Q Did anyone break into your office?

A No.

Q And where did you say you were employed?

A 214 St. Louis Street for Hynes and Lane, attorneys.

Q You, too, work for Mr. Hynes and Mr. Lane?

A Yes, Mr. Lane.

Q Mr. Hynes is an attorney, is that right?

A Yes.

Q What did the Sheriff say?

A I doubt if I can give you his exact words. He said something about, you have had your demonstration, now it is becoming a disturbance of the peace, break it up.

Q When did he make that statement?

A He made that statement after the crowd was screaming and hollering after Mr. Cox said something about the lunch counters.

Q That is when he made the statement?

A Yes, after the crowd started making that noise.

Q Now, when the crowd made this noise, of what nature was that noise? Was it of jubilant nature or how would you describe it?

A No, I wouldn't say. I wouldn't say it was just jubilant. It was just -- I don't know. They were just screaming and hollering.

Q Was it exuberant?

A You mean like they were happy?

Q Yes, ma'am. Like they would do at the going out of the old year and the new year coming in.

A No, I wouldn't say so.

Q Would it be like at a football game?

A No.

Q Could you tell me how would it be, just some type of event you could probably describe it?

A The only thing I can say is that they just started screaming and hollering and it was -- it was more frightening than it was cheerful.

MR. PITCHER: Wait a minute. Would you repeat that, please, ma'am?

A It was more frightening than cheerful.

MR. PITCHER: Go ahead.

Q More what?

A Frightening.

Q Were you afraid that they were going to -- like they were going to fight?

A Yes, you feel like something is going to happen, and you don't know exactly what it is going to be, but uneasy, a tense feeling.

Q Would it appear to you to be like somebody who was swimming and had taken a cramp?

A I don't think there is any comparison at all.

Q There is nothing that you had seen like it before?

A I had never seen anything like it before, and I have had cramps while swimming.

Q Have you -- was there anything -- you had never seen a demonstration before?

A Never.

Q You had never seen a march before?

A By demonstration, what do you mean?

Q A march or procession.

A Sure, parades.

Q You have seen parades? Did this look like a parade?

A No.

Q Did it look like someone had gathered for the purpose of protesting racial segregation or some of their grievances?

A It looked like a big gathering for some purpose, yes.

Q Did it look like a big group of people leaving a church house on Sunday morning?

A No.

Q Did it look like some form of church meeting where people could come jubilant and happy, spiritually happy?

A No, I don't believe they were spiritually happy.

Q Do you have any belief about their happiness, about their activities?

MR. PITCHER: I object, as what her beliefs in the activities and happiness is immaterial.

THE COURT: Sustained.

Q Did you see the tear gas bombs when they were thrown?

A Yes, I did.

Q How was the reaction at that time?

A My reaction?

Q No, the people who was protesting.

A There was quite a bit of movement.

Q Beg pardon?

A There was quite a bit of movement.

Q Do you say they were more orderly or more disorderly after the throwing of the tear gas?

A Disorderly.

Q More disorderly?

A Yes.

Q Did you hear all of Reverend Cox's speech?

A No, not at the very end, I didn't, and then I heard the lunch counter part of it --

Q And that was the last you heard?

A And I believe that is the last that I heard him say.

Q That is the last that you heard him say?

A After he said that, we closed our door and couldn't hear what he was saying.

Q Why did you close your door at that time?

A Because we felt like something was going to happen. That was after the screaming.

Q Before that time, did you hear all of the speech, before the time that he made the remarks about the lunch counters?

A I would say the majority of it.

Q Did you hear him say that if anyone should spit upon you, do not spit back?

A I don't remember.

Q Did you hear him say, if anyone should hit you, do not hit back?

A No, I don't think so.

Q The only thing of his speech then that you heard then was about the lunch counters, is that right?

A No, all during the demonstration, we were standing in our door and we heard the singing and we heard the prayer and we heard him talking and then when he said what he did about the lunch counters, well, we closed the door and locked it, and we couldn't hear his exact words if he said anything after we closed the door, because I was looking out the window, and I couldn't hear what he said.

Q You have testified to the number that were assembled in front of the Courthouse as to the depth of the crowd, how many was in ranks, file?

A Yes.

Q How many did you say?

A At least five, possibly more because they covered the entire sidewalk.

Q Do you have any idea about how wide is the sidewalk in front of your office?

A I would say about six feet. I don't know for sure.

Q Do you know whether or not they were assembled from the curbing backwards toward your office?

A From the curb back?

Q Yes, to your office.

A If they covered the entire sidewalk, that would be to the curb, wouldn't it?

Q I mean they started from the curb coming back to your office, is that right? They were facing --

A They were facing the Courthouse, east.

Q And theCourthouse is on the east side of St. Louis Street, is it not?

A I guess, I don't know my directions very well here.

Q Did you see the tear gas bombs when they was thrown?

A Yes.

Q You did?

A Yes.

Q Was the tear gas bombs thrown into this group of demonstrators?

A Into the group?

Q Yes, ma'am.

A No, I don't think so.

Q Where was this tear gas bomb thrown?

A I don't think as well as I can remember, I don't think they were thrown at the people. They were thrown on the pavement.

A Yes.

Q Was it thrown more to the west side of the street or more to the east side of the street?

A Oh, I don't know. I couldn't say.

MR. JONES: That's all.

MR. PITCHER: Thank you very much, Miss O'Brien.

WITNESS EXCUSED

. . . .

MR. PITCHER: Call Sargeant Chaney.

DONALD L. CHANEY, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q State your name, please, sir.

A Donald L. Chaney.

Q Where are you employed, Mr. Chaney?

A Baton Rouge City Police.

Q At the request of the Chief of Police, did you measure the sidewalk areas both longitudinally and laterally in front of the Courthouse?

A I did.

Q When did you make that measurement?

A Yesterday morning about 11:30 A. M.

Q Have you prepared that on a drawing?

A Yes, sir.

Q How was this measurement made, with what kind of a tape?

A A roller tape that you push.

Q And did you make this measurement yourself?

A I did.

Q And that is a true and correct measurement of the entire block of the 200 block of St. Louis Street, north and south, and also the distance from the curb from the front of the sidewalk to the steps of the Courthouse?

A That's right.

Q From the -- that's the west curb of St. Louis Street to the steps of the Courthouse. It also shows, does it not, the width of the sidewalk on the west side of St. Louis Street?

A Yes, sir.

MR. PITCHER: Without objection from opposing counsel, I ask that this be marked State-8.

THE COURT: In other words, what does that show? The whole block?

MR. PITCHER: Yes, sir, in other words, Judge, it shows the entire length of the block, the 200 block of St. Louis Street, together with the width of St. Louis Street from the west side of the sidewalk to the first step of the Courthouse on the east side of St. Louis Street with intermediate measurements.

THE COURT: May I see it?

MR. PITCHER: Yes, sir.

(The Court was handed exhibit State-8.)

MR. PITCHER: I tender the witness.

THE COURT: Do you want to question him about the measurements?

MR. JONES: Yes, sir.

CROSS-EXAMINATION

BY MR. JONES:

Q Mr. Chaney, when was this measurement made?

A At 11:30 A. M. yesterday.

Q In accordance with this measurement, the distance from the Courthouse step to the west curbing of St. Louis Street is 101 feet?

A That's right.

Q The west, according to this measurement marked State-8, the west sidewalk of St. Louis Street is ten feet, ten inches?

A As the parallel lines of the sidewalk -- some sections along that sidewalk, some of the buildings sit two or three feet further back from the parallel curb of the street than that.

Q Then would you be testifying that on some places on the west side of St. Louis Street it is wider than ten feet, ten inches?

A In front of one or two of the buildings it is.

Q Then the narrowest place on the sidewalk on the west side of St. Louis Street is ten feet, ten inches?

A That's right.

Q But from the Courthouse steps to the west curbing of St. Louis Street is 101 feet, is that right?

A That's right. That is what it measures.

MR. JONES: Thank you, sir.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q Mr. Chaney, did you answer Counsel Jones a moment ago that the measurement from the Courthouse steps to the west curb of St. Louis Street measured 101 feet?

A Yes, sir.

Q That is the west curb and not the rear of the sidewalk on the west side of the street, is it not?

A That's right. It is from the curb of the street to the front step of the Courthouse.

Q In other words, then, what is the distance from the west curb of St. Louis Street to the east curb of St. Louis Street, where the Courthouse property starts is what I am talking about.

A From the west curb of St. Louis Street --

Q To the Courthouse property line.

A -- to the Courthouse property line is forty-two feet and nine inches.

MR. PITCHER: Thank you. I have no more questions. Thank you, Mr. Chaney.

WITNESS EXCUSED

. . . .

J. B. Kling, Jr., called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q Your name is J. B. Kling, sir?

A J. B. Kling, Jr., yes, sir.

Q And what is your official capacity, Mr. Kling?

A I am a Major, Executive Assistant to the Sheriff of East Baton Rouge Parish.

Q Were you serving in that capacity on December 15th, 1961?

A I was Chief Criminal Deputy at that time.

Q In your capacity as Chief Criminal Deputy were you on duty say from nine o'clock in the morning December 15th through three o'clock that afternoon?

A I was.

Q Did you see anything unusual take place in the City of Baton Rouge on that date?

A Yes, I did.

Q Would you explain to the Court in your own words beginning at the commencement of this thing that you saw and tell the Court just what happened through the end of the episode?

A Well, there was a large accumulation of people of the Negro race that gathered in the downtown area concentrated very nearly in the immediate vicinity of the Old State Capitol Building. They marched around the Old State Capitol Building two abreast for more than one revolution of the entire block, and then there were other activities of a similar nature with these people coming into the city from more than one route, but that seemed to be the main gathering point.

Q Was the purpose of that marching around to permit the crowd to gather without being jammed up in one place?

A I --

MR. JONES: I object, Your Honor. How would he know what the purpose was?

MR. PITCHER: All right, I withdraw the question, Judge.

Q What was the main -- what was the rendezvous point?

A The Old State Capitol.

Q And what was the crowd doing while the ones who were already there were waiting for the others to arrive?

A Marching around the Old State Capitol.

Q And how many times did they march around if you know? I mean if there is anyway of telling?

A I don't know the exact number of times, but more than once.

Q Who was the leader of that marching group?

A Reverend Cox.

Q Do you see him in the courtroom?

A Yes, seated at the end of the table (indicating the accused B. Elton Cox).

Q Did you have occasion to talk to Cox that morning?

A I did.

Q How did that occasion arise and what was the nature of that conversation?

A Well, after these people had made a revolution of the Old State Capitol, the head of the line came to a halt --

Q Where?

A At the northeast corner of the State Capitol grounds on the North Boulevard side. I went up to the front of the line along with City Detective Leslie Font --

Q Is that Captain Font of the City Police?

A Yes. -- and asked a man whose name I do not know who was the leader of these people, and Reverend Cox walked up to me at that time and wanted to know what the trouble was. I identified myself to him, told him that I was the Chief Deputy Sheriff of the parish --

Q Did he identify himself then as the leader of this crowd?

A He did.

Q All right. Go ahead.

A And I asked him the purpose of the demonstration. He told me that he and these people were demonstrating in protest of the illegal arrest of some of their people who were being held in jail. I asked him if he didn't think the Court was the proper place to decide the legality of the arrest, and I told him further that the accumulation of those people there created an explosive situation, one that could erupt into serious trouble, and I asked him to disband them and take them back from whence they came.

Q Did he acquiesce in your request?

A He did not. He told me they would march by the jail, sing a hymn and say a prayer and would take about three minutes. I repeated to him, I said, "As the Chief Deputy Sheriff of this parish, I ask you again to disperse these people and take them back from whence they came."

Q How many people would you estimate were in the crowd at that time?

A I estimated approximately fifteen hundred to two thousand.

Q And how many police were available at that particular point to disband the crowd if they refused to disperse?

A Less than a hundred.

Q Did you tell Cox anything else about responsibility in this connection?

A I told him -- the second time I asked him to disperse the people in the interest of peace and harmony, and he told me he was coming by the building, and I told him then that if any violence resulted, I felt that it would be his responsibility.

Q What did he say?

A He said that it wouldn't be his responsibility, that I as an officer was duty-bound to protect him and the other people and, too, that he had only love in his heart.

Q Love in his heart, but he didn't care to follow your instructions to disperse.

A He didn't follow them.

Q And you explained to him very clearly that the gathering was creating an explosive situation?

A I did, sir, on two occasions.

Q All right, now, after they got to the Courthouse, describe the crowd to the Court.

A Well, they marched on down St. Louis Street and formed on the sidewalk of St. Louis Street on the west side of the street opposite the Courthouse. It was a huge crowd and standing very, very close together, and he led them in some songs. I don't know exactly how many. A prayer was said, stared at the flag pole on top of the Courthouse and finally after going through the songs, prayers and so forth and some other talking, he announced that it was lunch time, everybody was hungry and that there were lunch counters, if I remember correctly, nineteen in number, but I wouldn't be positive, downtown, and he urged the people to go down and go to these lunch counters, demand to be served, if they were not served to sit there for one hour, and following that, why there was a loud outburst of yelling, cheering, screaming, whatever you might want to call it --

Q How would you describe the tenor of that yell?

A It was a very shrill thing. It was something that was certainly unexpected and in my opinion would be something that could be calculated to alarm anybody that heard it.

Q Would you say that it was a spontaneous yell of exuberance or joy or would you say that it was a yell from pent-up emotions?

A I wouldn't say exactly what it was from, but I would say that it was certainly a spontaneous, loud outburst of yelling, and I don't know what caused it.

Q Have you ever heard a yell like that before?

A I don't think I have, no.

Q You have heard a lot of cheering at football games and other sports activities?

A That's correct.

Q This didn't have any of that timber to it?

A It didn't seem to be of that type yell to me, no.

Q Did you see the picture "The Alamo"?

A Motion picture?

Q Yes.

A I don't recall that I did.

Q All right, now, after Cox told them to go down if they were hungry and sit at these nineteen counters where they couldn't be served for one hour and this yell took place, what happened next?

A Well, I think immediately after the yell quietened down was when the Sheriff ordered them to move on.

Q Did they move?

A Not immediately they didn't, no.

Q What did Cox do when the Sheriff told them to move?

A He -- I don't remember the exact remark he made. As a matter of fact, I didn't hear that, I don't think, audible enough to understand it. He turned back to the group of people and then turned back toward the Sheriff and folded his arms in this manner (indicating) and stared at him.

Q Could you describe the look on his face when he did that?

A Well, it appeared to me to be a stare of contempt or belligerence.

Q Would arrogance describe it?

A Arrogance probably, yes.

Q How long after that, if you can estimate, Mr. Kling, was the first tear gas bomb bursted?

A Well, it was a few minutes after -- not --

Q Do you recall seeing any of the deputies move from the east side of the street to the west side right after the Sheriff said, "I told you to break it up"?

A No, I didn't see them move, because after the Sheriff had ordered them to move, then I was going in then to try to talk to Cox again and try to prevail upon him to take those people away.

Q In other words, in your opinion, was Cox in complete charge of that crowd?

A He seemed to be in complete charge, yes.

Q Had he told them to move, do you feel that they would have moved?

A I am sure they would have.

Q And he refused to tell them to move when the Sheriff ordered them to move?

A That's correct.

Q And I believe you said that he refused to disperse them when you ordered them to disperse at the Old State Capitol?

A Yes, I asked him twice to disperse them.

Q It didn't take them long to disperse after the tear gas was thrown, did it?

A It was rather rapid.

Q If that mob had dispersed upon the Sheriff's instructions, would the tear gas have been thrown?

A No, sir.

MR. PITCHER: Your witness.

CROSS-EXAMINATION

BY MR. JONES:

Q Mr. Kling, since we are going into the moving picture business, did you see "The Ten Commandments," the picture called "The Ten Commandments"?

A I think I saw that show many, many years ago. I haven't seen it recently.

Q Was the reaction of this group of people that Reverend Cox was leading, would you say it was similar to the "The Ten Commandments," the picture that you saw?

A Repeat your question, please.

Q This group that Reverend Cox was leading in this demonstration, now, you testified that you had seen "The Ten Commandments," didn't you?

A I had seen it many years ago. Many years ago I saw it.

BY THE COURT:

Q How many years ago?

A When I was a little boy.

MR. PITCHER: That was before sound pictures, wasn't it?

A That's right. It's been a long time ago.

BY MR. JONES:

Q Did you see -- you saw that picture, did you not?

A Yes, I saw it.

Q Did you see Moses leading the children out of Egypt land and into the freedom land, so to speak, sir?

A It has been so long ago that I don't remember, really. I remember that I saw the picture, but to tell you anything in detail about, I couldn't. You do know Pharaoh's folks got drown in that picture, don't you, sir?

A I don't remember that, really I don't.

Q You have testified that you have never seen a large accumulation of Negroes before, is that right, sir?

A I didn't testify to that.

Q What did you testify, sir?

A I don't remember testifying to that. I --

Q Did you testify that you have never seen a group of Negroes like this before?

A No, I did not.

Q Did you testify that this was an unusual group of Negroes together, sir?

A It was an unusual situation that day. Now, I don't remember -- I would have to have the testimony read back to me to say whether I testified to that point or not.

Q Had you ever seen a demonstration of that nature before, sir?

A I have.

Q You have, sir?

A I have.

Q Have you seen one in Baton Rouge before?

A I have.

Q At what time did you see that?

A That was several months ago, probably a year or more, two years ago. I don't really remember. I would have to refer to the records to get the date.

Q Did you have reference to the demonstration of the students from Southern University in March of 1960, sir?

A That's right.

Q Was it identically the same thing or similar?

A It was identical up to a point.

Q Was it conducted in the same manner, sir?

A Up to a point, it was.

Q And that demonstration was also before this Court on criminal charges, was it not, sir?

A I don't recall. I didn't testify in the case. I wouldn't say whether it was or not.

Q Did you have occasion to read about it?

A I saw it actually.

Q Did you read about it being prosecuted here and the leaders being prosecuted in this very same courtroom, sir?

THE COURT: The Court can call attention to its own proceedings. You can tell me about them --

MR. JONES: I withdraw the question, Your Honor.

Q Did any violence result as a result of this demonstration, sir?

A You are referring to the demonstration in 1960?

Q No, sir, this one of December 15th, 1961.

A Did any violence result?

Q Yes, sir.

A Well, now, how do you term violence? I mean it was a situation that, as I said previously, that was explosive and one that had gotten to the point where it had to be handled or it would have gotten out of hand.

Q But it did not get out of hand?

A I will say this way. We had control of it. We didn't let it get out of our control.

Q Now, back to my question. Did any violence result?

A Well, violence can be termed in many ways. Now, if anybody lost their life or anybody seriously injured, if you are talking about that, I would say "no."

Q Any fights?

A As far as I know there were none. I didn't see any.

Q Was there any brick throwing?

A Not in my presence.

Q Was there any form of vandalism whatsoever?

A Not in my presence.

Q Now, when you testified that the group was standing very, very close together, where were they?

A They were on St. Louis Street on the sidewalk, had the entire sidewalk blocked and just as close together as they could get for more than a whole city block.

Q Do you recall how many were abreast directly behind each other in that block as they were standing, sir?

A No, I don't recall. I know it was a solid mass of humanity in that block on that sidewalk. I don't know whether they were three deep, four deep or what.

Q If a moving picture showed that it was three deep, four deep or five deep, you would confirm that, wouldn't you, sir?

A If the picture showed it, I suppose that's what it was, if it was an actual picture of that scene.

Q And they were solid waxed together, is that right?

A They were in there, plenty of them.

Q How were they lined up, sir?

A All the way down the block in lines facing the street, lined behind that and behind that and I don't know how deep.

Q On what side of the street?

A On the west side of the street.

Q Were they facing west or east, sir?

A Facing east.

Q And where would they start forming as parallel to the street, sir?

A Right as close on the curb -- they were on the curb.

Q Right on the curb?

A That's right.

Q And whatever number they were, they were close waxed together, is that right?

A They were close together. They were jammed in there.

Q Could you recall the statement that Reverend Cox made, that is, the defendant here, with reference to the lunch counters?

A The best I recall, it was just as I testified just now. His words were these or very close to these: "It's lunch time. We are hungry. There are nineteen --" I think it was nineteen. " -- lunch counters right downtown. You know where they are and on the list. Let's go down there and eat. If you are not served, sit there for one hour." That was the reference he made to the lunch counters.

Q And how did the crowd react to that, sir, or this group that he had?

A They didn't move. They stayed there.

Q They stood still, sir?

A I guess they did. There may have been some shuffling there, but nobody left as far as I remember.

BY THE COURT:

Q How long was it after he asked them -- made his talk about the lunch counters, was it before the Sheriff asked them to disband?

A Well, after he made a talk about the lunch counters, I think probably he said something else, and it was then that they broke into this demonstration with cheering or screaming and yelling and so forth, and then I would say immediately following that the Sheriff made his announcement, and probably three or four minutes after that, the gas was used.

BY MR. JONES:

Q How did the Sheriff ask them to disband? Do you recall how he made his statement, sir?

A He used a portable loud speaker.

Q I mean what did he say?

A The best I recall he made the statement similar to this: "We have allowed you to demonstrate peaceably," and I don't remember the exact words, but meaningly, it was this: "You have gotten to the point now where you have gotten out of hand with the thing and break it up. Let's go."

Q That's the way he gave his --

A That was the essence of it as I understood it.

Q But he did say, "We have allowed you to demonstrate peacefully," is that right, sir?

A I think that's right.

Q Did you hear any part of Reverend Cox's speech before he made the statement about the lunch counters?

A I heard him calling the names of the songs to be sung and lead the prayer and instruct them to stare at the flag pole and so forth. I heard that.

Q Did you hear him make the statement, if you are spit upon, do not spit back?

A I don't recall. He may have said it, but I don't recall.

Q Did you hear him make the statement, if you are hit, do not hit back?

A I don't remember it.

Q Now, in this film that was shown here yesterday, I noticed that Reverend Cox was consulting with some of the parish sheriffs and some of the officials of the city and parish, were you among that group, sir?

A I don't know that. I would have to see the picture to know.

Q Did you -- were you in a group that talked with Reverend Cox in approximately the middle of St. Louis Street?

A No, the only time that I talked to him was at the corner of the Old State Capitol grounds.

Q Were you present in the group when Reverend Cox was asked, "What are you going to do?"

A I asked him what was the purpose of the demonstration, but I wasn't in any group where he was asked that other than when I asked him.

Q Were you there when Chief Wingate White asked him what was he going to do?

A No, I was not.

Q Upon the throwing of the tear gas bombs, were you there, sir?

A I was there.

Q At the time of the throwing of the tear gas bombs and immediately thereafter, what was the reaction of the group that Reverend Cox was identified with?

A They left the scene.

Q How did they leave, sir?

A Rapidly, running.

Q Did they leave more disorderly than they came in, sir?

A Yes.

Q Generally, did they come in orderly?

A They marched in two abreast, as I remember, three abreast.

Q Was they orderly?

A They were orderly.

Q Was the demonstration itself orderly up until the throwing of the tear gas?

A No, in my opinion, it became disorderly before the tear gas was ever thrown.

Q And at what point was that?

A At the point when this spontaneous screaming and so forth began.

Q And when did that begin, sir?

A It came toward the end of the program, I guess you would call it, that Cox had put on, but --

Q And exactly what was the defendant Reverend Cox doing at that time when this spontaneous reaction came about?

A He was making announcements to the crowd.

Q What was that announcement?

A That was along about the time he announced about the lunch rooms and so forth, I don't remember really what it was all about.

Q Was there anything of a violent nature implicit in the statement about the lunch counters?

A The statement was just as I told you that he said there were nineteen, I believe that is the correct number, you have the list of them, you know where they are. Go down there and demand to be fed, and if you are not fed, sit there for one hour. That was the statement.

Q Was anything violent, within your opinion, implicit in that statement, sir?

A I couldn't necessarily see anything violent in it, no.

Q Did you notice any other group forming within the area of the demonstration, sir?

A Yes, there was white people on the opposite side of the street on the Courthouse square. I saw several around, but they wasn't forming as a group. I mean there were some here, some there, and all around. It wasn't anything concentrated about it.

Q Were they orderly?

A Yes.

Q Did they form orderly?

A They just came up, as I remember, but, of course, I was busy at that the time, and you just can't notice how everybody does what in those things, but my opinion in the matter is, if I can state an opinion, is that they just came from here, there and yonder, one or two at a time. That is the way it looked.

Q About how many formed in that manner?

A Oh, I didn't count them, and as I say, they were scattered. I don't know. Really I wouldn't want to estimate it. It would be an unfair estimate.

Q Did you count those in Reverend Cox's group, sir?

A No.

Q Did you have an idea about how many --

A Well, there was such a congestion of them there and having had some experience in estimating crowds, it wasn't too hard to arrive at a likely figure.

Q What was that likely figure, sir?

A I estimated at between fifteen hundred and two thousand.

Q And this group that formed on the east side, you have no estimation of that figure, sir?

A Well, like I say, it would be an unfair estimate, because I didn't concentrate on estimating it, but I don't think it could have been a hundred. It was less than a hundred probably. I am not sure. I didn't pay much attention to it. It may have been more.

Q Did you observe their reaction at all?

A They stood there. They didn't say anything that I know of. I didn't hear anything said, because I was concentrating on this other situation, wanting to get it cleared up as soon as possible because to me, as a law enforcement officer, it was an explosive situation that could erupt at any time.

BY THE COURT:

Q Why do you say explosive?

A Because it was a situation, Judge, that in my opinion had formed there that could cause -- that anything could touch off just like an explosive, and we would have a riot or something else on our hands. That's why I refer to it as explosive.

Q What made it explosive?

A The mere presence of these people in downtown Baton Rouge, that is my opinion, in such great numbers.

MR. JONES: That's all, Your Honor.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q Mr. Kling, there is a serious matter of race tension in this parish, is there not?

A There is.

Q Because of the explosive nature of the situation?

A That's right, sir.

MR. PITCHER: That's all.

MR. JONES: No questions.

MR. PITCHER: Thank you, sir.

WITNESS EXCUSED

. . . .

MR. PITCHER: Bill Daniels.

WILLIAM H. DANIELS, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q Your name is William H. Daniels?

A Yes, sir.

Q You are employed in the District Attorney's office?

A Yes, sir.

Q Mr. Daniels, on December 15th, were you present when this demonstration took place in front of the East Baton Rouge Parish Courthouse?

A I was.

Q Would you describe to the Court in your own words just what you saw and what you heard during that demonstration?

A I saw a stream of colored persons approaching from the direction of Third Street coming down St. Louis being shepherded by a person who identified himself as the Reverend Cox. He marshaled these people in the block directly across from the Courthouse, lined them up and asked them to press closely together on the sidewalk while he himself took a position down in the street and was flanked by young women who were aiding him as leaders, choir leaders, in singing some songs.

Q Now, do you see the so-called Reverend Cox in the courtroom today?

A Yes, I do. Right there (indicating the accused B. Elton Cox).

Q What kind of a speech did he make.

A He made a speech to the effect that there had been segregation here in the Parish of East Baton Rouge, that there was unwarranted discrimination against colored persons, that there were stores on Third Street where there were nineteen counters at which their monies were taken -- he had reference to Negroes' monies -- but at the twentieth counter they were not welcome and their monies were not accepted. Therefore, he wanted them, because of the hour, it was after twelve o'clock, to go to the twelve designated stores and to go to this twentieth counter and sit down and tell the persons who were waiting at these counters that they were hungry and that if they were not served, they were to remain there for one hour.

BY THE COURT:

Q There were nineteen counters where their money was welcome and there was one, the twentieth, where it was not welcome, is that correct?

A Yes, sir.

Q And to go to which one, the nineteen?

A No, sir. This was a reference, an arbitrary enumeration of the number of counters in stores. This was a shorthanded reference to "x"-number of counters in the stores but one counter at which they were not welcome in all of the stores, that there were twelve designated stores. They knew which ones they were and he wanted them to split up into groups and go to these -- this counter, the one at which their money was not accepted and to tell the attendants or waiters that they were hungry and to occupy the seats for at least one hour.

MR. PITCHER: Does that answer your question, Judge?

THE COURT: Yes.

BY MR. PITCHER:

Q Now, Mr. Daniels, after he made this oration, what reaction did he get from the crowd?

A Well, the reaction is a very difficult one to describe, Mr. Pitcher, it is one that you could observe, but not describe, that is to say, I would attempt to describe it as follows: that it was enthusiastically greeted or it was received certainly with the prior knowledge that such an announcement would come from the Reverend Cox.

Q Was there any cheering or spontaneous outburst?

A There was not a great outburst. There was a ruffle of noise as if there were exchanges between or amongst the members of the group or the crowd that was massed on the sidewalk.

Q Did you hear during this demonstration any singing coming from the jail?

A Yes, I did.

Q How was that greeted by the crowd?

A This was greeted with a great outburst, you might say, but it was a signal for which the crowd had been awaiting or it was as if a signal had come from the jail.

Q Now, when this speech of Cox's was over, what then happened, or who else said anything at that time?

A At the time that Cox completed this exhortation to the crowd to go to stores, Sheriff Clemmons, who was standing -- or by whom I was standing made use of a portable loud speaker to tell Mr. Cox and the crowd that the demonstration was at an end, that they had gone beyond -- he said in fact that he was standing in the presence or in the company of the Mayor and the Chief of Police of Baton Rouge and that he was instructing and in fact ordering this crowd to break up and for Mr. -- for Cox and the others to disperse.

Q Did they disperse?

A No.

Q What did Cox do right after the statement from the Sheriff if anything?

A As I recollect it, Cox was standing in the street in a position almost opposite the Sheriff with his arms folded across his chest. When the Sheriff was through, he turned to the crowd, and said, "Don't move."

Q You heard that?

A I did.

Q Is it your opinion that he was in complete charge of this crowd?

A I never had the slightest doubt from the moment that he first appeared in the vanguard of this crowd coming from the direction of Third Street.

Q How much time elapsed from his demand, "Don't move," till the first bomb broke or could you estimate that time?

A It would be a very difficult thing for me to estimate, because as I recollect, if I heard a sound, it was to the right of me and way down the line at St. Louis and America Street. Two minutes, three minutes.

Q That was after Cox had turned to the crowd and said, "Don't move"?

A That is my recollection.

Q Did they move after that?

A Yes, you might say that they dispersed rapidly.

MR. PITCHER: I tender the witness.

CROSS-EXAMINATION

BY MR. JONES:

Q You say that this protesting group led by Reverend Cox, I believe you used the word "shepherded by Reverend Cox," is that right?

A Would you repeat the question, please?

Q I mean this particular group that was lead by Reverend Cox, this protesting group, you say they were "shepherded by Reverend Cox"?

A I used the word "shepherding" and I used the word "led." At one point he was in the lead. On subsequent times, he was shepherding them, that is to say, he was no longer in the forefront, he was at the flank, and giving instructions both verbal and by gesture in such a fashion that would have brought the crowd closer together.

Q Do you recall what the Sheriff said when he was asking that the crowd disband?

A I don't recollect.

Q His words as close as possible.

A I don't recall his precise words. The Sheriff said that this had gone far enough, that this was in fact, too far, that the crowd should break up now, that this was the end of permissible or tolerated demonstration on the part of the crowd or words to that effect.

Q Now, what was too far? When he said "too far," to what did he have reference to?

A I think that he had reference in context to the exhortation to break up into groups and to go into the designated stores. I think that he had reference to a continuing demonstration, that is to say, that it was being kept there for a long period of time, deliberately being kept there for a long period of time, because the singing was as if it had run out of co-ordination or prior planning. It was just a continuing remaining in place on the sidewalks. I believe that the Sheriff had in mind, although I did not speak to him then, prior, or subsequent, I believe that he felt that the situation was getting out of hand because on the Courthouse side of St. Louis Street were small knots or groups of white citizens who were muttering words, who seemed a little bit agitated. I believe in context he felt that the thing was completely out of hand or so I interpreted it.

MR. JONES: That's all.

MR. PITCHER: Thank you, Mr. Daniels.

WITNESS EXCUSED

. . . .

(At this time court adjourned for the day.)

WEDNESDAY, JANUARY 31, 1962

The trial of this case was resumed:

MR. PICTHER: Call Captain Font.

MR. JONES: Your Honor, I want to renew our objection about court being segregated and I want to reserve a formal bill.

MR. PITCHER: If Your

Honor Please, I submit there is no ground for a bill because there is no evidence whatever of a segregated courtroom.

THE COURT: Well, I just don't think it makes any difference. I don't know if he has got any right to a bill on it or not, but I will let him perfect on it, if he wants to.

MR. PITCHER: Well, my interpretation of the Criminal Procedure, If Your Honor Please, is that a bill of exception is to preserve an adverse ruling of the court or a thought-to-be adverse ruling of the court to the party retaining the bill, and I don't see how any ruling -- Your Honor has made no ruling whatsoever on a segregated courtroom. There is no evidence in the record to show it.

MR. JONES: On the first day Your Honor entered into the record that the Court was segregated and that it had been segregated over the years and that the purpose of the segregatio was to perserve peace and order. That was the custom. I think that came from the bench on that day.

MR. PITCHER: Well, if that is true, then that time was the time to reserve the bill. It comes too late.

THE COURT: Let it stand as it is.

MR. PITCHER: All right.

LESLIE C. FONT, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q Would you state your name, occupation and rank?

A Leslie C. Font, Detective Captain, Baton Rouge Police Department.

Q Captain Font, were you so employed and in such a capacity on December 15th, 1961?

A Yes, sir.

Q Did you have an occasion to participate in the control of the demonstration that took place both prior to and in front of the Courthouse on that date?

A Yes, sir.

Q Would you tell the Court in your own words just what you saw, heard and did from the time you came on duty that morning until the demonstration was dispersed?

A Yes, sir.

Q Inspector Trigg and I were together and a large number of people were grouping down by the Old State Capitol in the one hundred block of North Boulevard, so we stayed in that area for, oh, till the group increased in number, and about -- this must have been around 11:30 or twenty minutes to twelve on that date or in the morning, A. M. Mr. Kling from the Sheriff's office and I approached this group and asked who was in charge, so upon our first asking of this question, we got no response, no one told us, so then again we asked -- Chief Kling asked who was in charge, and at this time a colored fellow approached and stated he was in charge, and --

BY THE COURT:

Q Where was that?

A At the Old State Capitol in the one hundred block of North Boulevard.

Q Who was with you at the time?

A Chief Kling.

Q Any one else that you remember?

A Well, there was several news reporters followed us over there, but I don't remember who they were.

BY MR. PITCHER:

Q Go right ahead, sir.

A So this fellow approached and said he was in charge and what did we want --

Q Now, at this time do you see the man who approached you and told you he was in charge seated in this courtroom?

A Yes, sir, there he is right there with the hands in front of his face (indicating the accused B. Elton Cox).

Q And what is his name?

A He stated that his name was Elton Cox.

Q All right, go ahead.

A So at this time Chief Kling advised him what was the purpose of the demonstration, and he said it was in protest of the persons arrested for the picketing the previous day, so Chief Kling, he said, "Well, at this time I am requesting you to return from whence you came." So he said that they wouldn't be there long, they would hold the rally and then they would go on back to the campus.

Q Approximately how many people were in this crowd at that time?

A Well, it was a pretty large crowd.

Q Would you estimate between certain numbers? Would you say it was fifteen hundred people there?

A Yes, sir, I would say it was roughly fifteen hundred people there.

Q All right. What else did Major Kling say?

A The crowd was this large, that staggering out, they circled a whole block.

Q Now, when you say "a whole block," do you mean the whole block on which the Old State Capitol is situated?

A That's right, as they paraded around.

Q They circled the entire block?

A That's right.

Q What else did Major Kling tell the leader Cox?

A He repeated his same remarks. He said, "As chief criminal deputy of this parish I am ordering you again to disperse and return back to the campus from whence you came."

Q Did he use the term: "Your presence here is creating an explosive situation"?

A He did, yes.

Q What did he mean by that, to the best of your knowledge?

MR. JONES: I object to

that, Your Honor --

THE COURT: I sustain that. We already had Captain Kling testify to what he knew.

Q Well, I will ask you this question, Captain Font. How long have you been on the police force?

A Going on fourteen years?

Q Have you ever seen the racial tension in this parish at the pitch it is now?

A No, sir, I never have.

Q What happened after Cox refused to disperse the crowd?

A Well, we left the group and returned back to our automobiles and reported into the Sheriff and the Chief of Police what was being conducted and where they were to proceed to, so at that time before we could make any other move or remark or decision, the crowd then started to marching to the Courthouse, so at that time then we left that location, the one hundred block of North Boulevard, and proceeded on to the Courthouse ourself. So when we got to the Courthouse, I approached Chief White and I told him, I said that they were going to converge on the Courthouse and Cox had told us that they were going to sing and pray and at that time Chief White says, "Well, have the leader come over here --"

MR. BELL: Objection. That is hearsay.

A So I did. I walked over to Cox and I told him to come over to where the Chief was and the Chief and I and Inspector Trigg, and the Chief asked him, he says, "What are you going to do"? And he said, "Well, we are going to pledge allegiance," I believe was the first thing and the second I believe was sing a hymn and then the Lord's prayer or something similar to that. I don't know if it was in that exact order, so he started on back to his group, and the Chief said, "Wait a minute, let's find out how long it's going to take," so I called him back and asked him approximately how long it would take. And he says, "If we do what we want to do, we will be gone in around seven minutes." So then he returned to his group and started. The first thing he did, he told his group, he says, "All right, now, display your signs." So they proceeded to unbutton their raincoats and topcoats and produce these signs.

Q Let me ask you this. Because of the tenseness of the situation, did you have a feeling of relaxation when you saw them reach under their coats or did you know what they had under there?

A I didn't know what they had under their coats, and they came out pretty fast. It's a wonder somebody hadn't got hurt.

Q In other words -- repeat that.

A I say I didn't know what they had under their coats, and they came out pretty fast with those signs. It's a wonder somebody hadn't got hurt.

Q By being hurt, what do you mean, Captain?

A I didn't know what they had under their coats. I didn't know what --

Q In a situation that tense, was it possible that a shot could have been fired?

A Very easily. The tension was great.

Q Now, after they went through this program that Cox had outlined, this pledge of allegiance, et cetera, did they disband?

A No, they didn't. That is what really amazed us. We were expecting them to go ahead with their prescribed program, but then the next step that he undertook and commanded them was, "Now," he says, "We are all hungry," he says, "We are going downtown to the designated eating places, and we will approach these lunch counters and tell these people we are hungry and if we are refused service, we will remain there for one hour." And at that time I turned around to Sheriff Clemmons and Chief White, and I said, "It's agitating, and it's to the point now where somebody is going to get hurt," and the Sheriff, realizing this, stepped forward and took the mike and ordered them to disperse.

Q Did they disperse?

A They did not.

Q What did Cox do?

A He turned around and folded his arms, and the group then came to attention, I mean direct attention, and they stood there.

Q Did you hear him say anything at that time?

A No, I didn't hear him say anything.

Q Did you hear any disturbances from the jail at this time on the fourth floor of the Courthouse?

A Yes, some of them were singing up there.

Q And what effect did that have on the crowd?

A They cheered. They applauded very highly.

Q The cheering that went up at that time, could you describe it so the Court would know what kind of cheer that was?

A In my opinion, it sounded like something is to be conquered or something has been conquered. It is a conquest --

Q Would you say it is the kind of cheer they give at a football game?

A I would say wilder than a football game.

Q Wilder than a football game?

A Yes.

Q It wasn't the kind of cheer they give when the old year goes out and the new year comes in?

A No, no, that is not the type of cheer it was.

Q Would you say that that crowd was orderly at that time or disorderly?

A I would say it was disorderly at that time.

Q Now, with respect to the west side of St. Louis Street, Captain Font, was that entire block completely full of these people? Was it possible for anybody to say walk in the street into one of those law offices?

A No, it was impossible for them to walk.

Q Captain Font, do you feel that -- well, let me ask you this. How was that crowd dispersed?

A Well, the Sheriff then took the mike the second time, and he says, "As Sheriff of this parish, I am ordering you to disperse and return as you came in." And they didn't, and then he says, "If you don't, the deputies will move you." About that time two or three deputies stepped into the crowd and tried to move the people. They would not be moved, and about this time down to the far right a tear gas shell was exploded, and then at that time the other ones went simultaneously and then the crowd was dispersed.

Q Do you feel as an experienced police officer that in the event the tear gas had not been used, that we would have had such an incident as they had in Montgomery, Alabama?

A Yes, sir.

Q Would there have been violence and bloodshed?

A Yes, sir.

Q And how long have you been on the force?

A Going on fourteen years.

Q Have you ever seen anything paralleling this demonstration you saw in front of the Courthouse on the 15th of December since you have been an officer?

A I have never seen one -- I put eight years in the Marine Corps, and I handled a few riots previously, and I have never seen a situation like this exist where someone didn't get hurt. We were very fortunate, whether it be colored or white, that no one got hurt.

Q In other words, would you call this then an explosive situation?

A Definitely, yes.

Q Requiring drastic action to control it?

A Yes, sir.

MR. PITCHER: I tender the witness.

CROSS-EXAMINATION

BY MR. JONES:

Q Did you see the demonstration of March, 1960, sir? Were you here then?

A The demonstration here of March, 1960?

Q Yes, sir.

A What demonstration was that?

Q Southern University students marched downtown in March, 1960.

A In March of 1960. No, I didn't see that one I don't believe.

Q Were you on the police force here at that time?

A That's right.

Q Did you remember that demonstration which the sit-in cases grew out of?

A In March of 1960?

Q Yes, sir, when they had the students from Southern University sit down at Kress, Sitman's and --

A I remember the case, but I didn't participate in it.

Q Did you see that demonstration?

A No, I didn't.

Q You didn't see that march?

A No.

Q Then you wouldn't know whether or not that march was equivalent to or as large or greater than the march of December 15th, 1961?

A If I would answer that, counsel, it would be hearsay. I would have to answer it in hearsay testimony, because I was on another shift when that occurred.

Q Do you know whether or not that that was an explosive situation and as a result of the March, 1960, march there was bloodshed?

A Do you want me to answer the question?

Q Do you know whether or not there was bloodshed as a result of that march?

A No, I do not remember if there was bloodshed on that march or not.

Q Did you witness the Montgomery, Alabama, demonstration?

A No, I just read about it in the paper.

Q Did you read about the demonstration of March, 1960, in Baton Rouge in the papers?

A Yes.

Q Did you read whether or not any bloodshed occurred as a result of that demonstration?

A I don't remember, no.

Q You don't remember whether or not or do you remember --

A There had been so many articles pertaining to CORE and the freedom riders that have been listed in the paper that we knew eventually that it would probably occur here. We were all hoping it wouldn't, and there had just been numerous articles of bloodshed listed in the paper from so many of these incidents that we were actually afraid of it.

Q Do you particularly remember that bloodshed occurred in the march or the protest demonstration in Montgomery, Alabama, from what you read in the paper?

A Yes.

Q You don't remember particularly whether or not that bloodshed occurred in the protest demonstration here in Baton Rouge, though?

A Well, no, I think the one in Montgomery was bigger and more publicized than this one here or something. I know the case you are talking about here in March of 1960, but I didn't participate in it. I only heard the other officers talk about it, and I did read about it in the paper. I was on another shift working the night shift at that time.

Q Did you read about bloodshed resulting from the demonstration that occurred in the March demonstration in Baton Rouge?

A You have asked me that four times. I cannot remember it.

Q You did not remember?

A That's right.

Q Had it occurred and you read the paper, would you have remembered whether or not bloodshed occurred?

A Requestion that.

Q Had there been bloodshed in the March, 1960, demonstration of Baton Rouge and you had read the paper and that was stated in the paper, would you have not remembered it?

A Not particularly, no.

Q You can remember what occurred further away from it that you can what occurred near it?

MR. PITCHER: I object to that. It is argument.

THE COURT: That is argument.

Q When these signs that you talked about that came out like guns they went for very fast, what was on those signs?

A The same type of signs that we put twenty-five people in jail for the day before. It was challenging signs that was in violation of our state and city ordinances. It was the same identical signs.

Q What did they say?

A It said that Sears, Roebuck is unfair and quite similar signs to that.

Q Did they have one of the signs say "Have Gun, Will Travel -- Will Buy Elsewhere"?

A It could have, yes.

Q "Have Money, Will Buy Elsewhere"?

A "Have Gun, Will Buy Elsewhere"?

Q I was thinking about the "Have Gun, Will Travel" program.

A That was what we was afraid of.

Q They were shooting at something within your opinion, did they not?

A Yes.

Q What were they shooting at, sir?

A Shooting at a situation that was about to cause someone to get hurt, some violence that was fixing to be shown on maybe either side. It was a tense situation. That is what they were shooting at.

Q That was the segregation pattern existing here in this community that they were shooting at, is that right, sir?

A That was the CORE leader's opinion of it, I believe, yes.

Q You think they are going to hit their target?

MR. PITCHER: I doubt it.

A They might try.

THE COURT: Let's don't argue, counsel. I am having a hard time controlling the trial without that.

Q You testified that Chief Wingate White and Reverend Cox, the defendant here, had a conversation, is that right, sir, or a discussion?

A Through me, yes.

Q And what was the nature of that discussion?

A To find out what their program was set up there since we had not been contacted previously and had been advised that they was coming or how far they could go or what they could actually do to take steps. It was just a rush demonstration that just came into the city that we didn't know anything about. We was never contacted on it so I thought that we should contact and try to find out who the leader was, and we did just that, and after we found out who the leader was, then we tried to find out what program he had set up.

Q And what did he tell you?

A He told us that they was going to sing and hymn and sing hymns and pray in protest of the persons that were arrested the day previous.

Q To whom was he talking?

A Talking to me at one time. He stated that --

Q Was Chief Wingate White present?

A Yes, he was present.

Q Did you reply or did Chief Wingate White reply after he outlined his program?

A The only thing that we asked him was how long would he be, and he said approximately seven minutes.

Q And what was your response?

A I never responded. In fact, I told the Chief a block away we should have stopped them.

Q What did the Chief say to that?

A He said, "It is an explosive situation. Just wait. We don't want to cause nobody to get hurt." He said, "See how far they go and after they go so far, then we will stop it."

Q To whom was he talking then?

A He was talking to me.

Q Was Reverend Cox present at that time?

A He was not.

Q What did Chief Wingate White say to the defendant at the time he outlined his program?

A I don't think he has ever spoken to the defendant.

THE COURT: I appreciate both counsel not getting up and objecting to all the hearsay, but I wish you wouldn't ask specific questions on a hearsay basis. I know the difference, but it just wastes time.

Q When they circled the block, as you have testified, around the Old State Capitol, how did they circle that block, in what file, single file, double file, triple file or what have you?

A It was either double or triple, I don't remember which.

Q Could it have been single file?

A No, it wasn't single file.

Q Now, you testified that you felt surely that this was an explosive situation, did you not?

A That's right.

Q Now, what made you felt so sure about this being an explosive situation?

A Well, how they came, such a large group like that, just coming out of nowhere, just coming, filling the streets, filling the sidewalks. We are prepared -- we have traffic officers. We can handle traffic situations if we are advised that we are going to have a traffic situation, if the sidewalk is going to be blocked, if the street is going to be blocked, but we wasn't advised of it. They just came and they blocked it.

Q Did you testify that you feared that there was going to be bloodshed, did you not, sir?

A That's right.

Q And where did you think the bloodshed would emanate from? Where would it have its start?

A Well, one primary reason, when the Sheriff requested them to move, they didn't move; when they cheered in a conquest type of tone; their displaying of the signs; the deliberate agitation that twenty-five people had been arrested for the day before, and then they turned right around and just agitated the next day in the same prescribed manner. I had no alternative but to think that.

Q Now, I understand that you testified that you felt that he should have stopped them at an earlier stage of the game because you felt that it was going to be explosive?

A That's right.

Q For what reason did you think it was going to be explosive then at that point?

A The same -- I have to go back to the first question and the first answer on the explosive situation, just a large crowd of people coming like that for no apparent reason.

Q When you say "no apparent reason," what do you mean?

A They had no apparent reason. If they would have had an apparent reason to come in, I think the leader of that organization could have contacted the Chief of Police and advised him as to the illegality of the arresting of these people. No one has ever been contacted on it.

Q In discussing the program which Reverend Cox had outlined to you, what was your opinion of that program as he outlined it? How did you appreciate it?

A Well, I had really begun to appreciate it because I thought that they would do just those things that he said they would do. They would do those three or four things and then they would return back to the campus and nothing else would have to be applied or administered. I was hoping for that.

Q Did you concur or agree with that type of program being held?

A No, it didn't make any difference to me.

THE COURT: Let's don't get into what he thought about it.

Q Did you hear Reverend Cox speak?

A Did I hear it?

Q Yes.

A Yes, I heard it.

Q Can you recall some of the things he said other than the lunch counter situation which you have already testified to?

A Yes.

Q Do you mind telling the Court some of those things?

A Well, he stated that they was there in protest of the prisoners that had been arrested the day before and that to show the prisoners that the backing was there for them, that they were receiving backing, that they were there to sing for them, pledge allegiance to the flag and that they were there for desegration purposes of different things. I don't remember all of them offhand.

Q Did you hear him say that in an event that he was hit, not to hit back? If any of them was hit, not to hit back?

A Yes, I believe he did say that.

Q Did you hear him say if they were spat upon, not to spit back?

A No, I don't remember hearing him say that.

Q In what portion of his speech that you considered was of a violent nature?

A Well, I thought when he started the talk, the extensive agitation method of telling them to display their signs, I thought at that time he was igniting something that would cause maybe some violence somewhere along the line through the agitation method.

Q When you say "agitation," I don't follow you. Tell me what you mean when you say "agitation."

A By agitation?

Q Yes, sir.

A Deliberately displaying these signs that the previous people had been arrested for the day previous, the deliberate intent to agitate.

Q Those signs displayed, do you recall what they read?

A I remember one because it was right in front of me.

Q What was that?

A It said, "Sears is unfair."

Q Now, isn't that the same type of sign you see a labor union carry? Does that agitate you?

A No, usually I don't see a labor union with fifteen hundred people around the building either.

Q But when you see that sign, a labor union sign reading, "This job is unfair," does that agitate you?

A No, it doesn't agitate me.

Q It is this sign, you think, that made the situation explosive?

A I think in the method it was displayed in, yes.

Q How did they display that sign?

A I am talking about the method that he came about bringing fifteen hundred people to back that sign up. We are only talking about that one sign, I presume, so he brought fifteen hundred people to back that one sign up which was hidden beneath their coat without visible --

Q How many signs did they really have?

A Oh, I don't know. I didn't count them. Like I say, this one was directly in front of me. I looked down the line, approximately twenty.

Q Twenty signs and you only remember what one of them says?

A That's right.

Q And the fact that that particular sign read, "Sears is unfair," that is agitating?

A I didn't say that altogether. I said the method with which it was displayed.

Q What? Holding it up? Somebody was holding it up, wasn't they, carrying the sign?

A I also said the manner with which it was hid and then displayed and also the persons he brought with him to display the sign, the large number.

Q What other things took place or occurred during the time Reverend Cox made his speech that agitated?

A Well, you are talking about what agitated me the most. I am talking about which was the display or the agitation of violence, when the Sheriff requested them to move, and they did not move.

Q You are judging how the others felt by the way you felt, isn't that right?

A Oh, no.

Q You are not in a position to --

MR. WALL: Judge, we object to that.

Q Isn't that right, sir?

MR. WALL: I object to this. He is just arguing.

THE COURT: Mr. Jones,

what difference does it make in the trial of this case the questions to him about agitation? Do you want to explain that to me?

MR. JONES: That's all right, sir.

THE COURT: The Court in the final analysis if I have to adjudicate that will decide what is agitation based on what actions were done, not on what you think about it or what anybody else thinks.

Q Was there anything of a violent nature in saying you are going downtown to eat?

A No, not in that phrase alone, no.

Q Was there anything of a violent nature saying that we are going to utilize nineteen or twenty lunch counters?

A I think how it was prescribed was wrong.

Q Beg pardon?

A How he prescribed it was in the wrong attitude.

Q How did he prescribe it?

A Then he mislead his program, for one thing. He came back and then he didn't tell us that that was part of his program, and then he came back and right toward the last of his demonstration there, he said, "Now, we are hungry. We will go down to the designated lunch counters, and we will tell them we are hungry, and we will remain there for one hour if we are refused service." At that time the Sheriff picked up the mike and he says, "I am the Sheriff of this parish, and at this time I am requesting you to disperse and to return back to the campus how you came."

Q One more question. Had he told you that the lunch counter situation was in his program, would you have objected to his program?

A We would have discussed it further with the Sheriff and the Police Chief and I don't know what the situation would have been then.

Q What would you have done? Would you have objected?

A I --

MR. PITCHER: I object as being immaterial, because he is not the Chief of Police or the Sheriff.

THE COURT: I sustain it.

Q Would you have recommended to the Chief of Police?

A I wouldn't have recommended anything --

MR. PITCHER: Same objection, Judge.

A -- to the Chief of Police and the Sheriff.

Q Look, generally, was this an orderly protest demonstration?

A Was it orderly?

Q Yes.

A I would say no.

Q Was it --

BY THE COURT:

Q In what ways was it disorderly?

A Judge, I think the way they came in, as I said before, in such a large group, the blocking of the --

Q Are you referring to the number solely?

A Yes, sir.

Q They marched in orderly, so to speak?

A They marched in orderly, so to speak, yes, sir, blocking streets, blocking sidewalks, and then when the Sheriff asked them to disperse, then he deliberately turning around and folding his arms and the rest of the crowd coming to attention, then to my opinion it became disorderly and could very easily cause someone to get hurt on either side. It was a very tense situation.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q Captain Font, you said, I believe, that you were not called out on the demonstration that counsel for the accused referred to as being held in March of 1960, is that right?

A That's right.

Q Do you know of your own knowledge that additional help had to be called out on December 15th, 1961, to control this crowd?

A Yes, sir, it did.

Q Was every available shift of the City Police called out?

A Yes, sir.

Q Was additional help from the State Police called into being?

A Yes, sir, it was.

Q Was the Sheriff's office in full complement at that time?

A Yes, sir, it was.

Q In other words, in your opinion -- not your opinion, there was no necessity for additional help in the so-called March, 1960, demonstration?

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A Yes, sir, it was.

Q Was the Sheriff's office in full complement at that time?

A Yes, sir, it was.

Q In other words, in your opinion -- not your opinion, there was no necessity for additional help in the so-called March, 1960, demonstration?

A I wasn't called on, and I was the shift commander in the Detective Bureau. I was working nights, and my shift was not called out.

Q And on December 15th, 1961, was the night shift called out?

A Yes, sir.

Q Now, counsel has referred repeatedly in cross-examination to CORE, the demonstration put on by CORE in 1960. I am showing you a certified copy of the Articles of Incorporation of the organization known as the Congress of Racial Equality, Inc., and ask you to read into the record the date that this was signed.

MR. JONES: I am going to object to offering this into evidence because CORE is not the defendant in this case.

MR. PITCHER: I merely say I have a right to question him on what was raised by cross-examination, If Your Honor Please, and asked him repeatedly about the demonstration conducted by CORE in 1960, I think I have the right --

THE COURT: I think I have heard enough about the demonstrations -- let's just stay on this demonstration.

MR. PITCHER: Judge, this is my point. I want to show Your Honor that CORE wasn't even in existence in March of 1960. They didn't come into being until October of 1960, and I think I have got a right to prove that counsel has been asking him questions about an organization that didn't exist.

MR. JONES: You didn't ask him about an organization. You asked him about a demonstration.

THE COURT: I have already sustained the objection.

Q Captain Font, I show you a picture appearing in the local papers and ask you if that depicts an accurate portrayal of the crowd around the Old State Capitol on the morning as you have described they were marching around the Capitol?

A Practically, yes. The only thing that I could add, if you will notice that there are more in a heavier group than there are here, so this must be the tail end of the line as it is staggered out coming back, and here is the front of the line fixing to close in (indicating).

MR. PITCHER: In connection with the witness' testimony, I offer, produce and file in evidence the picture referred to and ask that it be marked State-9.

Judge, could I have Miss Rose read the question so that Your Honor might reconsider your ruling on this question about CORE that counsel asked concering the March demonstration of 1960?

THE COURT: I didn't understand him to say what you are trying to prove by that.

MR. PITCHER: That's the point. I didn't think you understood, and I would like to have the question read as to the way he asked it about whether or not the CORE demonstration in 1960, was there any bloodshed or was it necessary to call out -- I mean was he called out on that demonstration and he specifically referred to CORE. Now, I didn't inject this in there, but I think I have got a right to prove to Your Honor, because this record is going up as we all know. I have got a right to prove that that question is misleading, purposely directed to the witness because there was no such organization in March of 1960. I would like to have the question read so Your Honor can intelligently decide whether or not I have got the right to ask that question.

THE COURT: Well, I will sustain the objection. Do you have any further questions?

MR. PITCHER: Without letting the question be read?

THE COURT: I am not interested in that.

MR. PITCHER: All right, sir.

THE COURT: I don't care what organization was formed and when it was formed, and the best I can do is try to keep this trial within the limits of what the defendant is charged with, and I am going to do it. Do you have any other questions?

WITNESS EXCUSED

. . . .

(At this time court recessed for a short time and thereafter reconvened.)

MR. PITCHER: Call Inspector Trigg.

MR. JONES: If Your Honor Please, I think that we are going to use approximately six witnesses. One of them that we intend to use has been in court during the trial of this case, and under the rule of sequestration, I wonder if we would be able to use him as a witness.

THE COURT: Well, let's wait a while, and I will discuss it with you and Mr. Pitcher in an en banc session.

MR. JONES: Yes, sir.

THE COURT: Can you prove the same thing by another witness? If you can prove the same thing by another witness -- maybe we can get together on that.

R. S. TRIGG, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q State your name, please, sir.

A R. S. Trigg.

Q And where are you employed, Mr. Trigg?

A Baton Rouge City Police Department.

Q In what capacity?

A I am an inspector.

Q Inspector, were you so employed on December 15th, 1961?

A I was.

Q Did you have an occasion to take part in the control of a demonstration that occurred on that date?

A I certainly did.

Q In the City of Baton Rouge and around the Courthouse?

A I did.

Q Would you explain to the Court in your own words just as you saw what happened and what you did if anything in the control of this situation?

A Well, I had to deploy approximately seventy-five to eighty men to control an area that was being attacked by a riotous mob of Negroes, and because of the racial tension that was existing in East Baton Rouge Parish at this time, I called out a lot of extra men who were off duty.

Q Now, when did you first become aware that this crowd was gathering?

A Well, we had information actually the day before. We had gotten it through news media and there were several pamphlets being issued by this organization CORE.

Q Now, where did this crowd start to gather on the morning of the fifteenth?

A In relation to the city itself?

Q Yes.

A Well, they started coming in from the northern sector of town by cars and buses and on foot and they gathered at the Old State Capitol Building and, in my opinion, a rather disorderly group taking up the entire sidewalk, surrounding the Old State Capitol Building, until they had gathered sufficient force to attain their end, I suppose.

Q In your opinion, how many persons were gathered around the Old State Capitol just prior to the march on the Courthouse?

A I would say between fifteen hundred and two thousand.

Q And who was the leader of the crowd?

A This fellow sitting right here, Cox (indicating the accused B. Elton Cox).

Q How do you know he was the leader?

A Because of his actions to the crowd. He would address certain segments of the crowd and they would -- like trained puppets, they would do -- they would get in line and more or less follow his instructions.

Q You didn't hear him tell the Chief -- I mean tell Major Kling and Captain Font that he was the leader? You weren't present when that conversation took place?

A No, I walked up right after that conversation was over.

Q When the crowd gathered in front of the Courthouse, on which side of St. Louis Street did they gather?

A On the west side of St. Louis Street.

Q Did they take up the entire sidewalk between America and Louisiana Avenue?

A They took up the entire sidewalk from the north driveway of the service station on to the corner, on the south end of the corner of that block, to the north corner of that block, and there were some on the north side of America Street in that first block there.

Q In other words, when you say the first block, you have reference --

A Well, actually the second block of St. Louis Street, which is directly in front of the Courthouse building.

Q Now, Inspector, did you hear Cox's speech to that crowd?

A I heard a portion of it. I am not in complete memory of the whole thing, because at the time I was trying to get all of my men into position, whereas if this outburst were to get extremely bad and out of hand, which it was beginning to do, then we could handle the situation.

Q Did you fear that those people would storm the Courthouse?

A I was absolutely afraid that they would.

Q Did you hear any disturbance on the fourth floor of the Courthouse during this demonstration?

A I surely did.

Q What did you hear?

A I heard a lot of hurrahs and hurrays and boisterous yelling and an impromptu, spontaneous reaction from the prisoners in the jail, the Parish Jail.

Q Now, what reaction did that have on the crowd in front of the Courthouse?

A Well, it seemed to set them aflame. It seemed to cause them to build up an extremely sharp edge toward riotous and real mob action.

Q Did you hear the Sheriff order that crowd to disperse?

A Yes, sir, I did.

Q Did they disperse?

A No.

Q Did you hear what Cox said to the crowd immediately after the Sheriff's order, "I order you to disperse"?

A Yes, I heard something to the effect that, he held his hands up and faced the crowd and said, "Stand here," and then he turned around in a very defiant attitude and folded his arms thusly (indicating) and said that we will go down with the gas, honorably.

Q Would you say that Cox was in complete charge of that crowd?

A Absolutely.

Q After the Sheriff ordered them to disperse, did they disperse?

A No.

Q What was necessary to make them disperse?

A The use of tear gas.

Q Do you feel that if that tear gas had not been used that there would have been violence and bloodshed?

A I figure that if the tear gas hadn't been used when it was used that possibly night sticks and riot guns would have had to be used.

Q How many -- would you estimate the number in that crowd again across from the Courthouse?

A Between fifteen hundred and two thousand.

Q And how many enforcement officials, roughly, were available to handle that situation?

A Well, I don't know how many Sheriff's deputies or State Troopers we had on hand, but I had approximately seventy uniformed City Police officers there.

Q From your -- how long have you been on the Police force?

A Seventeen years.

Q During that seventeen years, have you ever had to handle a crowd of this magnitude and one in which the tension was running this high?

A Never before. I hope and pray I never do again either.

Q Do you feel, Inspector Trigg, that had that crowd not been dispersed and had been permitted to continue in the demonstration as it was being conducted at the time the tear gas was thrown that those officers would have been able to control that crowd without the use of firearms?

A No, I don't, because the racial tension was built up to such a high pitch that there was an explosive situation, and there would definitely have been somebody hurt.

MR. PITCHER: Your witness.

CROSS-EXAMINATION

BY MR. JONES:

Q What's your definition of a riotous mob?

A One that is real disorderly and trying to disrupt peace and tranquility.

Q What was the peace and tranquility that this protest and demonstration was trying to disrupt?

A Well, it disrupted the entire working personnel of the City-Parish Government in the Municipal Building.

Q Would you mind describing how this protesting group of people marched into town?

A Would you repeat the question, please?

Q Describe how they came into town.

A Well, many of them walked into town. Some of them rode in private automobiles. Some came in buses.

Q How were they reacting when they came in?

A I wasn't particularly interested in how they were reacting while they were coming into town. I was merely interested in what they were going to do after they formed.

Q How did they react after they got into town?

A Well, they seemed like a group of sheep being led by a sheep herder.

Q Humble as a lamb?

A No, I didn't say that.

Q How were they acting, sir?

A Well, they were excited. They were on the verge of wanting to do something that they had probably been told to do. I don't know just exactly what they had been told to do, but from their actions, I figured they were going to try to storm the Courthouse and take over the jail and try to get the prisoners that they had come down here to protest that had been quote "illegally arrested."

Q Did they come in whooping, cursing and shooting?

A No.

Q Did they come in quiet and peacefully?

A No, I wouldn't say that either.

Q Just what was they doing?

A Well, for one thing, they were taking up the entire sidewalk around the Old State Capitol Building and marching four and five abreast and in some places two abreast.

Q They continued to march?

A They continued to march around the Old State Capitol Building.

Q Did they not stand still and assemble there?

A On occasion they stood still and other groups would come into the marching group, and then as they would pick up more people, they would start marching again.

Q Did they march peacefully and orderly?

A For the time being, I have got to say yes.

Q When they marched on down on St. Louis Street on the west side, were they peaceful and orderly?

A To some extent, and I qualify that statement by adding this: that when they started forming down here near this service station, they were pushing one another. There were so many crowded into such a small area that they were pushing one another, and on occasion two or three in little small sections of the street there would literally be pushed into the street.

Q Something like soldiers dressing off, is that right?

A No, absolutely not.

Q They was getting in line in an orderly form, is that what you are talking about?

A No.

Q What -- did they run across the street and whoop and holler as if they were stung by a bee?

A Well, I have never been stung by a bee, so I --

Q I mean you have seen people stung by a bee.

A To my knowledge, I have never seen it.

Q As if they were pricked by a pin, just jump all out of place and --

A No, I don't think that was quite the reaction, either.

Q It was just the normal reaction to get them into place?

A Well, that might be their normal way of acting.

Q Now, you testified that you had notice of their coming into town the day prior?

A That's right.

Q That was on the fourteenth that you knew they would be in town on the fifteenth, is that right?

A That's right.

Q How did you know that, sir?

A Through the news media. It seems that CORE and these other organizations similar to that thrive on publicity and we, of course, get our information.

Q Is it that they had publicly announced that they were coming into town on December 15th, 1961?

A What do you mean publicly announced?

Q By the news media and everything, made it known?

A Well, I got my information through ways that I will not divulge in the courtroom.

Q But you did testify by pamphlets and news media that you had been informed that they were coming?

A Right.

Q And when you say they were like trained puppets, describe --

A I didn't say "puppies," I said puppets.

Q That's what I am saying "puppets," and maybe we put a little accent a little bit different, but I am talking about something like Charlie McCarthy --

A That's right. Would you repeat your question?

Q Yes, sir. Now, describe what you meant when you said they were acting as trained puppets.

A They were so well informed and so well led by this Negro Cox over here that --

Q By whom?

A This Negro Cox.

Q Go ahead.

A That they just went strictly by his every wish and fancy.

Q Now, was Reverend Cox giving any vicious orders?

A Was he given any --

Q Was he giving any?

A Was he giving any?

Q Yes.

A I couldn't hear what he was telling them, but they seemed to respond to some conversation that he was having with them.

Q Did they respond viciously or violently?

A Well, I don't know what you mean by the word "vicious"?

Q Did they respond violently?

A I have got to say yes.

Q Just how did they respond?

A Well, they continued to march around this Courthouse, and they continued to march down here and do things that disrupts our way of living down here. I am not talking about just the white people, the Negro and the white person. We have been disrupted here in the last four, five or six years by outsiders, people coming into this community that have antagonized certain groups and agitated certain groups, and the racial tension that has been built up is something that somebody is eventually going to get hurt.

Q What is our way of living, sir?

A Peacefully, tranquility existing, working in harmonious relationship with one another, enjoying the better things of life such as hunting and fishing instead of having to be out here carrying a gun and throwing tear gas.

Q Now, what was Reverend Cox doing that caused the throwing of the tear gas?

A I think I have answered that question already, Your Honor. Do I have to answer it again?

THE COURT: Answer what part of the activities of Reverend Cox that you haven't described. I have heard you describe three or four different things.

MR. PITCHER: Your Honor, he testified that the tear gas was necessary because Reverend Cox refused to disperse the crowd. That is what he said twice.

THE COURT: Answer it again.

A We had to use tear gas on this mob that had deliberately refused to obey the Sheriff when he ordered them to move. They had taken up the entire sidewalks. There were men, women and children, both colored and white, that had to use the street to get to and from Third Street to do their shopping.

Q You haven't ever cleared me up on the use of your word "mob." Please explain that to me.

A The use of my word "mob"?

Q Yes, sir.

A Well, I think it is a group of people who are disorderly and are built up to a state of anxiety that just for any little reason whatsoever could turn into a riot.

Q You just testified that they were organized --

A Oh, yes, they were organized.

Q And they were acting as sheep, quiet and humble.

A No, I didn't say that. I didn't say -- I didn't even imply that.

Q Did you hear Reverend Cox's speech?

A I heard a portion of it.

Q What part of it did you hear?

A I heard him say that -- he turned around to this crowd, and he said, "I know that you all are hungry, and we are going to go down here to these designated places and sit in these lunch counters and if they don't feed you, we will sit there for an hour and then leave."

Q Did you find anything of a vicious nature in that part of his speech?

A Personally, yes.

Q What was it?

A Well, I figured when a man tells fifteen hundred or two thousand people to go down here to a certain number of designated places and go in there and tell them they are hungry, and if they don't feed you, to sit there for an hour, that he is agitating some sort of trouble.

Q What type of trouble would you think he was agitating, sir?

A Well, there could have been people in there that just didn't like the presence of some of these people, their own race -- we have in my work in dealing with people -- I know a lot of colored people that despise some of the things that are going on among their own people.

THE COURT: This is all very interesting, but I think we ought to get on with the case.

BY MR. BELL:

Q Mr. Trigg, I think you stated that you feared that these people were going to storm the Courthouse. Was it the mere presence of these colored students peacefully demonstrating that put that fear into you?

A No, no, not their presence. Some of their activities. For instance, at one point of this demonstration, this so-called demonstration, several of them went into their coats rather abruptly and in a kind of a quick movement and they came out with signs. Now, at that point it is just a wonderful thing that we had a lot of trained officers, good trained officers there or somebody would have got hurt.

Q I think you mentioned that you heard a portion of the Reverend Cox's speech. Did you hear him say that he was not going to fight back and that if he was spat upon, he wouldn't spit back?

A No, I didn't hear that.

Q Did you hear him say that if you strike him, that he wouldn't strike back?

A No, I didn't hear that.

Q I think you testified that you did hear him tell the crowd after the Sheriff gave the order to disperse, that to stand there?

A Yes, I heard that.

Q You heard that portion?

A Uh-huh.

Q But you didn't hear any other portion of the speech?

A No.

Q Except about the lunch counters and about the disobeying --

A If it will help you any, I heard one other remark I think he made. He said that we will face the flag, and I don't remember whether he said they were giving a salute to the flag or allegiance or a minute of silent prayer or what it was. Anyhow the flag wasn't flying that day because of the inclement weather, and he said, "Well, I see the flag is not there, so we will face the flag pole."

Q Mr. Trigg, were you present when Reverend Cox talked with some of the officials prior to the demonstration?

A No.

Q You weren't present?

A I was in the area. I was approximately thirty-five to forty feet away from a conversation that he had with one of my officers and the Chief Criminal Deputy from the Sheriff's office.

Q I think you testified that these students were on the west side of St. Louis Street?

A That's right.

Q Did they make any overt move toward the Courthouse grounds?

A Well, like I said, on several occasions this pushing and jiggling around, juggling around or moving around on the sidewalk, several of them would be pushed off the curb and therefore have to take two or three steps out into the street to gain his or her balance, and therefore it could have been taken by any officer or any person there that this person was fixing to come across the street.

Q But you said, I think, in your previous testimony that there was a large number on the sidewalk and it was pretty tight, and would you take that to be just a normal movement of a large crowd on the sidewalk?

A You don't know.

Q Did you search the crowd for any weapons?

A No, we didn't touch any of the individuals.

Q So you really was quite sure that this crowd was not armed?

A No, we wasn't sure of that. We were just sure we could handle the situation.

Q I think you testified that you had around seventy-five to eighty policemen. You thought that was competent to handle a crowd this size?

A With the arms that we bore, I think we could have handled them.

Q You really weren't afraid that they would storm the Courthouse though, were you?

A Yes, I was. Not for fear of myself nor my officers but for fear of the students themselves and the other people that were down there.

Q Mr. Trigg, I think you testified in your duties as an inspector you had knowledge of this organization CORE. I think you said you talked to the leader Reverend Cox. I think you testified that you had previous knowledge of this planned demonstration, didn't you?

A That's right.

Q Weren't you informed that this group did not use any violent means of trying to achieve their objectives?

A I don't think I can answer your question to any benefit to you or to the Court because the Communist people have told us time and time again that they want peace.

Q I am talking about the CORE organization.

A Well, I know, but I am just using that as an example.

Q In other words, you are implying that CORE is Communistic?

A No.

Q Well, I mean were you really apprehensive that these people would make an attack on the Courthouse?

A I really was.

Q You didn't find any weapons in the group?

A We didn't search any of them.

Q Did you feel there might have been a need to search them?

A Judge, I have answered that question.

THE COURT: Answer it again.

A Like I say, we had enough officers and we bore enough arms that we could handle any situation that should arise.

BY MR. JONES:

Q Did you arrest any of those who was carrying pickets that day?

A No, I didn't make any arrests.

Q Was any arrest made that you know of anybody carrying pickets on December 15th?

A To my knowledge, no.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q Since counsel has asked you the question, isn't it an old Communist trick to use so-called nonviolent demonstrations to incite violence?

MR. BELL: I object, Your Honor. That is not within his knowledge, I would say.

THE COURT: Well --

MR. PITCHER: I refer, If Your Honor Please --

THE COURT: I kind of believe if we are going to liken the activities of this group to some Communist-trained group, then we ought to have somebody come in that has worked with Communists. I don't know whether he has or not, and I have no idea, but I think the point has been made by both --

MR. JONES: Your Honor, we will withdraw our question if you feel -- he is not qualified on the basis of what you say to answer the question.

THE COURT: Well, I sustain the objection.

Q Did you read about and --

THE COURT: I sustained --

MR. PITCHER: I am not asking that question, Judge.

Q Did you see movies of and read about the San Francisco riots that were held when the House Un-American Affairs Committee attempted to hold hearings out there?

A I have seen that picture on several occasions.

Q Did you know of your own knowledge that those riots were incited by the Communist Party from information from the F. B. I. and the report from Mr. Hoover?

A Yes, sir.

MR. BELL: I object to that.

Q Have you seen the report submitted by Mr. Hoover to the House Un-American Affairs Committee on the riots in San Francisco?

A I saw it, but I didn't read all of it, sir.

THE COURT: Well, let's get on something else.

MR. PITCHER: If Your Honor Please, I have got to repeat again.

I have never opened this witness nor -- on Communism or anything else, but this has been done on cross-examination, and I think I have got a right to go into it.

THE COURT: I am not going to hear any more about it. Now I am going to limit it -- the only thing I am going to limit it to now is to what you have heard, -- what the officers heard, what they saw, and what I think they are qualified to give opinions on, and that goes for both sides, what they saw, what they heard, and I will draw the conclusions from that. Do you all understand that?

MR. PITCHER: Yes, sir.

MR. JONES: Yes, sir.

Q Mr. Trigg, how much tear gas did you use to break up this crowd?

A We used just a sufficient number of tear gas bombs and shells to disperse the crowd.

Q Did, at any time, any member of CORE, Cox, Ronnie Moore or anybody else ask your permission to hold this demonstration?

A No.

Q Did they ask the permission of any other official to your knowledge?

A To my knowledge, no.

MR. JONES: I object, Your Honor.

MR. PITCHER: I think that's admissible, If Your Honor Please.

THE COURT: What was the question?

MR. PITCHER: I asked him if Mr. Trigg as inspector of police knew whether or not these people had ever requested permission from either the Chief of Police or the Sheriff to hold this demonstration.

A To my knowledge, no.

THE COURT: They didn't request him and he is not either the Chief or he is not either the Mayor --

BY THE COURT:

Q Are you?

A No.

Q You are not with him every second, are you?

A No, sir.

MR. PITCHER: If Your Honor Please, he could have been present if Cox or anybody else had requested this permission. I will withdraw the question. It doesn't make any difference. That's all. Thank you.

WITNESS EXCUSED

. . . .

MR. PITCHER: Call Captain Edwards.

We may save a little time if counsel will stipulate that the Nineteenth Judicial District Court was in session both on December the 14th and December the 15th, 1961. It will save me putting on the Clerk of Court to prove it. Would you stipulate that?

MR. JONES: I don't see what relevancy that would have.

MR. PITCHER: I didn't ask you that. I asked you if you would stipulate. If you don't, I will put the Clerk on. The Judge has indicated he wanted to get through, and I --

THOMAS TERRELL EDWARDS, JR., called as a witness in behalf of the State of Louisiana, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q Mr. Edwards, what is your full name?

A Thomas Terrell Edwards, Jr.

Q Where are you employed?

A East Baton Rouge Parish Sheriff's office.

Q In what capacity?

A I am a Captain in charge of the jail.

Q Were you in that capacity on December 14th and 15th, 1961?

A Yes, sir.

Q Did -- were there some twenty-three people of the colored race placed in jail on December the 23rd for violating certain State statutes?

A Yes, sir.

Q Was there any disturbance in your jail on December 15th at approximately twelve o'clock, between twelve and one o'clock, mid-day?

A Yes, sir.

Q What brought this disturbance on?

MR. JONES: I object, Your Honor.

THE COURT: What do you object to?

MR. JONES: What brought what disturbance on?

BY THE COURT:

Q Describe the disturbance.

A At some time around noon, approximately noon, it could have been shortly before or shortly after, we had quite a disturbance among these twenty-three prisoners that were put in there on the fourteenth. They were singing and shouting and hollering, screaming, beating on the bars, beating on the walls and so on, trying to attract -- we took it for granted that they were trying to attract the attention of the demonstrators that were going on across the street on the west side of the building.

BY MR. PITCHER:

Q Well, would you say then that the demonstration across the street was what brought on that disturbance?

A Very definitely, sir.

Q You don't know anything about the demonstration across the street, do you, Mr. Edwards?

A Not other than what I could see from the jail window and that wasn't very much.

BY THE COURT:

Q Where were the prisoners in the jail? What side of the jail were they on?

A In the colored cell block on the west side of the building, sir.

Q Would St. Louis Street be visible from the jail at that point?

A Yes, sir.

Q And were they there at the windows?

A Yes, sir.

THE COURT: All right.

MR. PITCHER: Your witness.

CROSS-EXAMINATION

BY MR. JONES:

Q On which side of the jail were they on, sir?

A West side.

Q On the west side?

A Right.

Q Is the jail integrated?

A Beg pardon?

Q Is the jail integrated, sir?

MR. PITCHER: Just a minute. I object to that as irrelevant and immaterial.

THE COURT: I sustain it.

Q Did they have any white people in that side of the jail?

A They had two or three deputy sheriffs back there that are white men.

(The next question and answer were stricken by order of the Court.)

MR. PITCHER: I ask that that last question and answer be stricken, Judge.

THE COURT: Strike it.

Q Did they have any of the fourteen to which you have made reference on the west side of the jail?

A Fourteen what?

Q That twenty-three that were arrested on the fourteenth, did they have any of them on the west side of the jail?

A All twenty-three of them were in what we call the colored long-line, and the colored long-line is on the west side of the building.

Q What do you call the other side?

A What is the color of what?

Q What do you call the other side of the jail?

A Well, it depends on what cell block you are talking about.

MR. PITCHER: I object. It's irrelevant and immaterial.

THE COURT: I sustain it.

MR. JONES: That's all.

MR. PITCHER: That's all, Mr. Edwards. Thank you.

THE COURT: Do you want to ask him about a count he made up here yesterday?

MR. PITCHER: Oh, yes.

MR. JONES: Oh, yes, sir.

THE COURT: All right, I will ask him.

BY THE COURT:

Q In response to a request of the Court did you count the number of colored people sitting in the courtroom at the time court opened on, what day was that -- Monday?

A Day before yesterday.

MR. JONES: Monday, the twenty-ninth.

Q Did you do that?

A Yes, sir, I did.

Q And how many people were sitting in here?

A There was 127 colored and 8 whites in the courtroom behind the rail.

Q Behind the rail.

A At the first count I made. Now, I made two, If Your Honor remembers. The second count there was the same number of colored, 127, and there were 14 whites.

Q How much later was that?

A Oh, about two hours, if I recall correctly.

Q When court opened there were 127 colored and 8 whites, is that correct?

A Yes, sir.

Q And approximately how many seats were reserved by the Court for whites?

A Forty-two.

Q How many colored were on the outside?

A Eighty-eight.

Q Eighty-eight?

A Yes, sir.

BY MR. JONES:

Q Would they be waiting to get in, sir?

A None of them indicated that they wanted to get in. They were standing in the hall is all I could tell.

BY THE COURT:

Q Was that at the same time, because it looked like to me that there were more than eighty-eight.

A At the time I counted, sir, there were just eighty-eight. Now, I was told --

Q How much later was that than when I first told you -- when we opened Court, how much longer after that did you go out and count?

A Well, I made the second count in the courtroom and then I went outside and made a count, and I believe it was approximately two hours between the two counts. I am guessing at that time. At the time I really don't recall, sir.

Q At the time that the court was opened, wasn't there more out there in the hall than there were at the time you took the count?

A I don't know, sir.

Q I was told there were.

A I was told that at several times in the afternoon there 200 or 250, but I didn't see them. I didn't go out there.

Q Do you know anyone who could make an estimate to that effect among the officers?

A Captain Henderson or Captain Thompson could.

THE COURT: All right, is that all?

BY MR. JONES:

Q Did you reserve any seats in the courtroom for the white people?

A I didn't reserve any seats for anyone.

Q Was there any seats in the courtroom reserved for the whites then?

A No, sir, His Honor --

THE COURT: I will answer that from the bench. I reserved one-half of what was formerly the white section for white people and I gave the other half of it to the colored people.

WITNESS EXCUSED

. . . .

THE COURT: Captain Thompson.

HERMAN A. THOMPSON, called as a witness by the Court, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q How many colored people were out in the hall at the time court started on Monday?

A There were two hundred or better, Judge.

Q Is that your estimate?

A Yes, sir, that was why we called the fire marshals.

Q Could it have been as many as 250?

A It could very easily.

Q Could it have been more than 250?

A They were solid from this courtroom door about four foot out from the door down to the Grand Jury room, and there were some of them sitting on benches down the hall.

Q Did you clear a corridor between them for a passageway to the door here?

A We were having difficulty. That is why we called the fire marshals in order to enforce the fire laws.

Q How long did a crowd of that size remain outside?

A I would say for at least two hours.

BY MR. PITCHER:

Q Captain, at the time there were 250 people in the hall, was that the same time that Captain Edwards has said there were 127 in the courtroom?

A That is correct, sir.

Q And there were only eight white people in it at that time?

A That is correct, sir.

MR. PITCHER: That's all.
Your witness.

A (Directed to the Court) Do you want what you asked for yesterday?

BY THE COURT:

Q What is that?

A You asked how many vacant seats there were.

Q What time was it?

A At 11:15 A. M. yesterday you asked me and there were twenty vacant seats and only five waiting outside, and out of the five we asked -- one was Reverend Johnson and he said he didn't care to come in.

MR. PITCHER: That's all.

WITNESS EXCUSED

. . . .

MR. PITCHER: Mr. Perry Johnson.

PERRY M. JOHNSON, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q State your name, please, sir.

A Perry M. Johnson.

Q What is your official capacity, Mr. Johnson?

A Clerk of Court, Nineteenth Judicial District.

Q How long have you been the Clerk of the Nineteenth Judicial District Court?

A Since 1954.

Q Were you the Clerk of the Nineteenth Judicial District Court on December the 14th and 15th of 1961?

A I was.

Q In the year of 1961, when did the Nineteenth Judicial District Court officially convene?

A September 5th.

Q Under the laws of this state, do you know that this court is in session for ten months?

A It is.

Q Was it in session on December 14th and 15th of 1961?

A It was.

MR. PITCHER: Your witness.

CROSS-EXAMINATION

BY MR. JONES:

Q Who was being tried on December 15th, 1961, do you know, sir?

A I do not attend every session of court.

Q Do your records show who was being tried on December 15th, 1961?

A They do. I can get the record, the minute book, to show you if you are interested in who was tried. I don't know offhand.

Q Do you know whether or not --

THE COURT: I think we can stipulate that none of the twenty-three that were placed in jail -- is that what you are driving at?

MR. JONES: Yes, sir.

THE COURT: None of the twenty-three that were placed in jail were here in court, present in court, either for arraignment but were present in jail awaiting trial only, is that correct?

MR. PITCHER: But they were being held in jail awaiting trial, yes, sir.

THE COURT: That is what I said. All right. That's all.

MR. JONES: No -- awaiting trial -- it was awaiting in jail. We don't know if it was awaiting trial, nolle pross or arraignment.

THE COURT: You can argue that, Mr. Jones. They were placed in jail for something.

MR. PITCHER: Thank you, Mr. Johnson.

WITNESS EXCUSED

. . . .

MR. PITCHER: Call Sheriff Bryan Clemmons.

THE COURT: If you want to call the District Attorney, he will tell you what they were awaiting in jail for.

MR. PITCHER: You'd better believe it, Judge.

MR. JONES: Your Honor, I would like to know whether or not they were awaiting in jail to be tried on the date of December 15th.

THE COURT: All right. Mr. Pitcher, you can satisfy the Court in that regard.

MR. PITCHER: If Your Honor Please, the twenty-three named members of CORE that were in jail, alleged members of CORE that were in jail awaiting trial on December 15th, had been arrested only the day before, on December 14th. It was utterly impossible to have them down in court on the next day, as Your Honor knows, the docket being what it is, and I can assure the Court at this time that all twenty-three of them will be brought to trial as soon as possible.

MR. JONES: I would also like for the Honorable District Attorney to stipulate whether or not since December 14th, 1961, has either of the twenty-three that was in jail has been brought down for arraignment or have been tried until this day, January 31, 1962.

MR. PITCHER: I would answer that question readily and gladly. I am trying Elton Cox because he is the chief, prime agitator in my opinion in this whole movement, and he is the first man I am going to try. When I get through with him, I will take his satellites.

THE COURT: Come on, Sheriff Clemmons.

BRYAN CLEMMONS, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q Would you state your name, please, sir?

A Bryan Clemmons.

Q And what is your official capacity, Mr. Clemmons?

A Sheriff, Parish of East Baton Rouge.

Q How long have you been in law enforcement work, Mr. Clemmons?

A Twenty-six years.

Q What organizations dealing strictly with law enforcement are you a member of at this time?

A Well, I am a member of the Louisiana Peace Officers' Association, Past President of the organization. I am a member of the National Academy of Graduates, President of the Louisiana Chapter. I am a member of the Board of Directors of the national group in Washington. That's about the number of organizations right now.

Q When you talk about the National Academy, is that the academy conducted by the Federal Bureau of Investigation for law enforcement officers?

A Yes, sir.

Q Mr. Clemmons, when were you elected Sheriff of this parish?

A June, 1948.

Q Were you serving in that capacity on December 14th and

15th of 1961?

A Yes, sir.

Q On December 14th or 15th or at any date prior thereto, did anyone representing themselves to be an official of the Congress of Racial Equality and particularly Elton Cox request your permission to conduct a demonstration in this parish?

A No.

Q Did such a demonstration take place on December 15th?

A It sure did.

Q Will you tell the Court in your own words just what you know about that demonstration, exactly what you saw, heard and what you know about the racial situation in this parish and when it started?

A Well, on December 14th we received information that the Congress of Racial Equality, commonly known as CORE, had enlisted the aid of students or people in this parish to stage what we were told to be a demonstration in front of the Courthouse, also a demonstration and protest of not having equal jobs for their race in several stores around the parish; and in furtherance of that on the morning of December 15th bus loads of people started appearing in our city, unloading at the Old Capitol grounds for the most part. A group of people of a thousand or more, growing in numbers up to twenty-five hundred, I would say, paraded around and around the Old Capitol grounds two-by-two just step-by-step behind each other and then they came over in front of the Courthouse here on St. Louis Street across the street from this very building we are in now. I would say in excess of fifteen hundred people. They began a demonstration there calculated to protest the arrest of some twenty-three people who were arrested by the Baton Rouge City Police for sit-down demonstrations in some of our local stores. The situation grew from bad to worse. It was peaceful at first and they sensed that their leader Cox --

Q When you say their leader Cox, who are you indicating?

A The man on the far right there (indicating the accused B. Elton Cox).

Q The man who is being tried today?

A Right.

Q Go ahead.

A He indicated to them that they would sing a song, recite a hymn, or sing a hymn, rather, say a prayer and return to their cars and go back to Southern University where everything would be peaceful and quiet, which would have been a fine situation had it happened that way. They sang a song and then there was a song sung in the Parish Jail and then --

Q When you say "in the Parish Jail," who sang that song in the Parish Jail?

A Well, the group of people in what we call the colored long-line on the west side of the Courthouse. That is where the singing was coming from. I was down in the street in front of the building and I am sure that was where it was coming from.

Q What reaction did the crowd have then when they heard the singing in the jail?

A Oh, loud cheering and spontaneous clapping and screaming and a great hullabaloo. It became from a more or less quiet situation when prayers were being said and hymns sung to a boisterous, noisy aggregation.

Q Would you say that the attitude of the crowd on both sides of the street changed at that time?

A Oh, indeed it did. It changed from a rather peaceful situation to a fiery situation that could be touched off with a very spark, like that (snapping his fingers).

Q Now, what did -- did you hear the speech that Cox made to the people with reference to the lunch counters?

A I did.

Q What did he say?

A He said in a sense that it was twelve o'clock and those of you who are hungry, go up town. There are plenty of counters up there, nineteen of which want your business or don't want your business. I don't know exactly what, but he said, "Go to the four on the protest list and sit down and demand to be fed. If you are not fed, sit there for one hour." There was loud cheering and screaming and everything else.

Q What did you do at that time?

A Well, the situation had gotten to the point where a riot was about to take place, in my opinion.

Q So what did you do?

A I grabbed a power microphone -- I didn't grab -- Sergeant Reiprecht was standing by, and I took this power microphone and I said, "Now, you have been allowed to demonstrate. Up until now your demonstration has been more or less peaceful, but what you are doing now is a direct violation of the law, a disturbance of the peace, and it has got to be broken up immediately."

Q In response to that order, did they disperse?

A Indeed not.

Q What did Cox do in response to that order?

A He raised his hands in this manner or in this manner (indicating), I don't know which, see. Tension was so great at that time I could be mistaken about the gestures, but all through his talk he was gesticulating right and left, right hand and left hand. He said, "Don't move," in no uncertain terms.

Q That was in response to your order, "I order you to

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disperse"?

A Right.

Q Did the crowd obey your order or the order of Cox?

A They obeyed his order, their leader.

Q And then what happened?

A Two of my officers started across the street, and they said, "You have heard what the Sheriff said, now, do what he said," and again, this gesture. I don't know whether the same words were said or not, but the same gesture of defiance to an officer's order, and about that time, the first tear gas was exploded into the crowd.

Q Sheriff, do you feel that if that tear gas had not been exploded at that time, would this situation have erupted into a riot?

A I have no doubt about it.

Q How many men -- people did you estimate were in this crowd?

A Conservatively, in excess of fifteen hundred.

Q And how many law enforcement officials were out there to handle this crowd, about?

A No more than ninety.

Q Is there any doubt in your mind as to the control that Cox had over this mob?

A There is no doubt in the world about it. He is their self-admitted leader, and he was the one doing the talking, speaking, the directions, and there is no doubt in the world about it.

Q Did you have an occasion to question one Ronnie Moore in the presence of Cox in the jail shortly after this thing happened, after Cox was put in jail?

MR. JONES: I object to it, Your Honor.

THE COURT: On what grounds?

MR. JONES: He is not on trial.

MR. PITCHER: He is going to be a witness, and I know he and the accused were present.

THE COURT: I will permit it. Go ahead.

Q Did you have an occasion to talk to Ronnie Moore in the presence of Cox?

A I did.

Q Relate that conversation to the Court if -- when Cox heard it.

A Well --

Q Your question to Ronnie Moore and his answer.

A Do you want me to tell the occasion of me going up there?

Q Yes.

A Ronnie Moore had told Captain Edwards or someone else in the jail that he wanted to see me, and he wanted me to have Cox brought in his presence to attempt to make Cox eat, that he was worried about his physical condition.

MR. JONES: I object to that line of testimony, Your Honor. That has nothing to do with this case.

THE COURT: Sustained.

Q Don't say why he wanted to see you or anything about Cox's condition. What happened in Cox's presence between you and Ronnie Moore?

A Well, I told Cox and Moore both, I said, "Don't you know that what you are doing will never gain anything for you, that your fight is in the courts and not on the streets of the City of Baton Rouge or any other city?" Moore, in Cox's presence, said, "The courts are entirely too slow." And I said, "Don't you know that this will ultimately result in a terrible situation and even bloodshed may ensue?" He said, "Mr. Sheriff, no war was ever won without bloodshed."

BY THE COURT:

Q Who said that?

A Ronnie Moore.

Q He and Cox and you were together?

A Yes, sir.

BY MR. PITCHER:

Q Did Cox as the recognized leader of this group remonstrate with him for that remark or did he criticize him in anyway?

A No, he did not.

Q Did you gather from Cox's attitude that he agreed with that remark?

A There could be no other answer.

MR. BELL: I object to that, Your Honor. He couldn't know what Cox's attitude was.

THE COURT: He can tell what Cox did.

Q As a matter of fact, Sheriff, from the investigations that your office has made and from the newspaper accounts of what has transpired, isn't it a fact that Ronnie Moore is a co-leader of the Congress of Racial Equality in this Baton Rouge area?

MR. JONES: Your Honor, CORE is not on trial. We have been through that one time. The defendant here is on trial, and he is being tried for violating certain criminal statutes of the State of Louisiana. It is not CORE on trial.

MR. PITCHER: If Your Honor Please, --

THE COURT: I am going -- it is so interwoven in it now with the testimony and otherwise, I don't know how to separate it.

Q Isn't it a fact, Sheriff, that Ronnie Moore by his own statements as reported in the paper and by the statements made to you in the jail that he is the head of the CORE chapter in Baton Rouge?

A He told me he was at Southern University.

Q In reference to that so that counsel can't be mistaken about my purpose, I hand you a record of the Nineteenth Judicial District Court and ask you to read the title of that into the record.

A (Reading) "City of Baton Rouge ex rel John Christian, Mayor-President, City of Baton Rouge, vs. Congress of Racial Equality and Others, December 15th, 1961."

MR. PITCHER: I offer that

record into evidence in this case and ask that Your Honor take judicial notice of it with the right to supply a photostatic copy, if necessary.

Q Sheriff, as the chief law enforcement officer of this parish, I ask you this question. If any other organization had conducted such a demonstration in front of the Parish Courthouse, colored or white, Protestant, Catholic, Jewish, any kind of organization, if they had conducted this same type of demonstration, would you have reacted in the same way?

A I certainly would have. I want to tell you that a crowd, an orderly crowd, can become a mob just like that and that was just about what was going to happen. If we had to contend with such a situation day after day after day, thousands of people storming this Courthouse in protest of an arrest, in protest of anything, -- we have had labor disputes here and we put people in jail sixty-four and hundreds of them, and we have never had such a demonstration since I have been in law enforcement in this parish.

Q Have you ever seen the racial tension running as high in the parish?

A I never have. It is a deplorable situation, and we have lived here in peace and quiet all these hundreds of years.

Q Do you know where Cox is from?

A I am reliably informed that he is from High Point, North Carolina, and has no business in this community at all.

MR. PITCHER: Your witness.

CROSS-EXAMINATION

BY MR. JONES:

Q The citizens of the United States are limited to the area of the United States in which they should travel, within your opinion, sir?

A No, but I think any good citizen of the United States should obey the laws of the land.

Q All citizens should obey the laws of the land?

A That is correct.

Q Thank you, sir. When you say an "ugly crowd," what do you mean by an ugly crowd, sir?

A I didn't understand you.

Q When you say, "This looked like an ugly crowd," or "This was an ugly crowd," what do you mean?

A I never used the word "ugly." I said it was an orderly crowd to begin with, but it was fast becoming disorderly.

Q I am sorry. I misunderstood you. When you had the defendant Reverend Cox and Ronnie Moore in your office talking with them, I think you testified that there is not anything that you can gain by what you are doing or words to that effect, did you not, sir?

A Exactly right, and I certainly believe just that. I don't think any street demonstration such as took place in this parish -- I think it is horrible. It is reprehensible. It can gain no purpose whatsoever. The courts are the place for that.

Q Do you know what they were trying to gain by the purpose of this demonstration?

A I know that they came down here to protest the people who had been legally arrested as far as I know. I didn't have anything to do with the arrest, but we were holding them in the jail of this parish under legal warrants, and any group that comes down in direct protest like that is, in my opinion, violating the law.

Q Did you hear Reverend Cox's speech? Did you hear Reverend Cox's speech out here in front of the Courthouse?

A I sure did.

Q Do you recall any part of it, sir?

A Do I recall any part of it?

Q Yes, sir.

A I recall the part where, as I have testified before, in the beginning he told these people they were going to have their prayers, hymns and pledge of allegiance, I believe was used, and then they would go back to their cars in a peaceful manner, go to Southern University and that would be the end of the meeting. He went further on to say that if anybody spits on you, don't spit back. If any officer talks ugly to you, don't talk back ugly and so on. Very, very peaceful in that part of his talk.

Q Did you have any objection to that part of his talk?

A None whatever. If he would have done what he said, there would have been no trouble at all. The whole thing would have been over and done with.

Q Did you have any objection to them being assembled on that side of the street while he was making that speech, sir?

A I had no objection to it.

Q None at all, sir. Is it your testimony that you had no objection to him making that portion of his speech, sir?

A That portion of his speech was fine. If he had kept his word and the thought that he expressed at that time been carried out, there would have been no trouble whatsoever. There would have been a peaceful dissemination of the crowd and that would have been it.

Q Did you not testify that as far as his speech went, no further than that, you had no objection to them being assembled there?

A I said that before.

Q What did you say, sir?

A I just answered your question.

Q What did you say?

A I said I had no objection to his being there at that particular time, and if he had gone ahead and done as he said he would, as any good man who has a word would have done, there would have been no trouble whatsoever.

Q Now, what part of his speech became objectionable to him being assembled there?

A The inflammatory manner in which he addressed that crowd and told them to go on up town, go to four places on the protest list, sit down and if they don't feed you, sit there for one hour. Prior to that, though, out from under these coats, some signs of -- picketing signs. I don't know what's coming out of there next. It could be anything under a coat. It became inflammatory, and when he gestured, go on up town and take charge of these places. Absolutely, that is what it meant. Go on up town and take charge of these places of business. That is what they were trying to do is take charge of this Courthouse.

Q You gave them the order to leave, sir, to disband or disperse?

A I said to break it up immediately.

Q And at what point did you give that order, sir, in his speech?

A He had finished his speech.

Q When he finished?

A The crowd was screaming so loud and so on and so forth that it became just tremendous. You have no idea of what actually took place unless you were there to hear it.

Q Just how did you make your statement or just how did you give your order? Just give the Court your order. Just give us the order that you gave that day.

THE COURT: He can't tell what order he gave. Just tell what --

A I have done that about five times already, Judge, I will be glad to do it again.

THE COURT: Tell the Court again.

A All right, sir. I said, "We have permitted you or allowed you," or words to that effect, "to demonstrate here and portray your cause. Now what you are doing constitutes a violation of the law, and you are disturbing the peace. Now break it up immediately."

THE COURT: Okay, counsel, have you got that?

MR. JONES: Yes, sir, that's all.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q And in response to that, what did Cox say?

A "Don't move."

MR. PITCHER: That's all. Thank you.

WITNESS EXCUSED

. . . .

MR. PITCHER: Call Chief White.

WINGATE M. WHITE, called as a witness in behalf of the State of Louisiana, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q State your name, occupation and rank, please, sir.

A Wingate M. White, Chief of Police for the City of Baton Rouge.

Q How long have you been Chief of Police, Mr. White?

A Since March 7th, 1961.

Q Then you were so engaged on December 14th and 15th of 1961?

A Yes, sir.

Q Had you received information prior to December 15th that a group of people would march on downtown Baton Rouge and the Courthouse for the purpose of engaging in a demonstration in protest of the arrest of twenty-three pickets the day before?

A We had received information on the fourteenth that the protest of some nature would be held on the fifteenth, but we didn't know, of course, at that time the exact nature.

Q Mr. White, tell the Court in your own words just what took place with reference to this demonstration and what you did or said and saw on the -- starting on the morning of the 15th of December.

A Well, on that morning we had information, of course, that this demonstration was to be held somewhere in the city. We weren't -- we didn't know specifically where, and we had assembled a few extra men to meet any situation that might arise as best we could, and we had the men scattered in what we considered strategic points in the city. Along about I suppose a quarter to eleven or something like that I received information that a large crowd of young colored people of approximately college age were assembling in the vicinity of the Old State Capitol Building, and I went over to the Old State Capitol Building, and when I got there, they were going around the Capitol in a marching fashion and around the block clockwise. They appeared to be engaged in this maneuver to permit other people as they came up to join in the line and form some sort of a loose loop formation, and shortly after I got there, they completed the circle of the Old State Capitol and they stopped, and I was in the car there at the corner with the District Attorney and the Mayor and the Sheriff -- this is at the corner of North Boulevard and St. Phillips Street. Deputy Kling and Captain Font went over to this group to ascertain from them just exactly what their purposes were.

Q Chief, at that point, let me ask you this. Had Elton Cox, the defendant in this case or any other person requested your permission to hold this demonstration on December the 15th?

A They very definitely had not.

Q At the time you became aware of the situation as it existed, could you have prevented this demonstration without violence?

A I don't believe we could.

Q In other words, you permitted this demonstration to continue then for what reason?

A Well, in the hopes that we could contain it without any violence.

Q Now, what happened after the crowd had gathered at the Old State Capitol?

A Well, Deputy Kling and Captain Font went over and talked to these people and they came back shortly and said --

Q Chief, you can't -- don't say what they said, Chief.

A Anyhow, they came back in a few minutes, and then we went back to the Municipal Building, and as we left the corner of St. Phillips Street and North Boulevard, this group of people started walking east on North Boulevard, and we got back to the Municipal Building, and I parked my car in the rear of the building and went with Captain Font and Inspector Trigg to the corner of America and St. Louis Street. As we got to this point, the leading elements of this group were just turning the corner at St. Louis Street and North Boulevard coming south on St. Louis, and when they were about halfway down the block approximately, Captain

Font told me, he said, "I feel like we should stop these people now." He says, "I believe they are not up to any good purpose at all." I told him "no," that I felt like if we did stop them at that point, that we might -- there was a good chance that we would precipitate violence by so stopping them and that I wanted to avoid that if we possibly could.

Q Was that because of the racial tension that is in this parish, Chief, that made you feel that way?

BY THE COURT:

Q Why was it? Why did you feel that way?

A Well, because any large group of people like that gathered together, and this was an extremely large group -- I would say easily two thousand people -- in a manner of that nature without announcing their purpose or anything, it didn't bode good for the community, in my opinion. Most organizations that want to hold a parade or a meeting of any kind, they have no reluctance to evidence their desires at the start.

Q What conversation did you have with the defendant here?

A Well, at the time --

Q When and where was it? Tell me about that.

A I didn't have any conversation with the defendant until after Captain Font had made this suggestion to me.

Q All right. After he had made that suggestion, did you have a conversation with him?

A Yes, sir, I did.

Q What was the nature of that?

A Well, as this group came on and they got just about in front of Leon Hebert's office --

BY MR. PITCHER:

Q Wait a minute. You say Leon Hebert's office, where is that located?

A Well, it is in the one hundred block of St. Louis Street. When they got about to that point, Captain Font and Inspector Trigg asked them to stop there, and they brought Cox to me in the center of the street, and I asked him what was the purpose of this demonstration or this group, what did they intend to do, and he stated to me that they intended to hold a demonstration against the illegal arrest, as he termed it, of the twenty-three pickets on the second day preceding that.

Q What happened after that?

A At that time I told him that he must confine that to the west side of the street. This, of course, was not -- I didn't mean it in the import that I was giving him any permission to do it, but I was presented with a situation that was accomplished, and I had to make a decision, and I made it in the best interests of community safety, in my opinion.

Q Go right ahead. What did they do then?

A As he started to leave, Captain Font suggested to me that we find out from him how long he intended to have this meeting, and we called him back and he said that they would be there about seven minutes and that they would then return to the campus at Southern University. So they proceeded on down into the two hundred block of St. Louis Street, and they stopped there, and they had, as I recall, a couple of songs and a moment of silent prayer and they recited the Lord's prayer and the oath of allegiance and then Cox began to make a speech. He continued this for some -- I don't know how long, but four or five minutes or such a matter -- and at the conclusion of this he became a little more excited, it appears and it appeared to me, and he told them, he said, as I recall the substance of what he said, "It is now lunch time, and I am sure you are hungry and if you are, go down to the stores named on the boycott list and go into the lunch counters and stay there for one hour. Tell them you are hungry and you want to be fed." Of course, I don't say that those are the exact words, but that is the best that I can recall and --

Q What reaction did he get from the crowd when he said that?

A He got a shout, a roar, that -- well, I have never heard the like of it before I don't believe. And at this point the Sheriff and I were standing in the middle of the block and the Sheriff took the portable power mike from Sergeant Reiprecht, and he addressed the crowd and he told them that they had been permitted to demonstrate far beyond the time that they had agreed to and that they were becoming disorderly and that they must disband and -- wait a minute. He said he was asking them to disband and to go back to wherever they came from. There was no movement from them for a short space of time, I would say approximately thirty or forty seconds, maybe a minute, and then he stated again to them, "It's time to go, now break it up." With that two of the deputies started across the street and one of them, as I recall it, said, "You heard what he said, now go on, move out." The Sheriff called them back and then they, as I recall it, they were ordered to move another time and then about that time the tear gas bombs started exploding and that's when they broke up.

Q Chief, let me ask you this. Do you feel as an experienced police officer that this crowd could have been dispersed without the use of that tear gas?

A Well, in view of the fact that the Sheriff had identified himself as the Sheriff of this parish and had ordered them to move and there was absolutely no move whatever for compliance, I don't think there was any other way they could have been moved.

Q What did Cox tell you the purpose of this demonstration was?

A It was to demonstrate against the -- he said, as he phrased it, the illegal arrest of the twenty-three pickets on the second day preceding.

MR. PITCHER: Your witness. Wait a minute. Excuse me. One more question.

Q I believe you testified that you did not give them permission to hold this demonstration?

A That is correct.

Q Did you ever hear the Sheriff give them permission to hold this demonstration?

A No.

Q Did you hear anyone give them permission to hold this demonstration?

A I did not.

Q Did they ever request you or anyone in your presence the right to hold this demonstration?

A They did not.

MR. PITCHER: Your witness.

CROSS-EXAMINATION

BY MR. JONES:

Q Mr. White, did Reverend Cox show you his program that he was intending to hold on the west side of St. Louis Street after you had told him that he could hold it there and no other place, he would have to confine it to the west side of --

A He had a piece of paper in his hand from which he read. He did not show it to me.

Q Did -- to whom he showed this paper, do you know?

A He didn't show it to anybody.

Q Did you tell him that he would have to confine his assemble on the west side of St. Louis Street?

A I did.

Q Was that the time that he met with you in the center of the street discussing this program?

A That's right.

Q Now, you say he didn't show you a paper, but he told you what he was going to do, is that right?

A He had a piece of paper in his hand from which he read.

Q And he outlined the program to you, is that it, sir?

A That's right.

Q And you told him he could have it, but he would have to confine it to the St. Louis side, the west side of

St. Louis Street?

A I told him he would have to stay on the west side of the street with it. Now, of course, as I have testified earlier, this was a statement that was made, not because I wanted to make it but because I was presented with a situation that I couldn't do anything else.

Q I see, but nevertheless, you made that --

A I did make that statement, that's right.

Q Now, was this protest demonstration somewhat orderly or was it orderly?

A At the beginning of it, it was orderly to a fashion.

Q Well, when you say "to a fashion," that is somewhat qualifying it. Explain that for us.

A They didn't have any formation or any order about the thing, but they did proceed on down the street. Of course, they were blocking the entire sidewalk, and there was no -- they were a little bit ragged in appearance but they were still fairly orderly.

Q At what point did it become disorderly, sir?

A At the conclusion of Cox's speech.

Q And at what point of his speech or what did he say at that particular time?

A That's when he made the reference to going down to the lunch counters, and that's when they changed from a fairly orderly crowd to a tumultuous crowd.

Q Now, in this statement to go to the lunch counter and eat, was it not implicit in that statement to leave this spot and go some place else?

A They didn't make any move to leave.

Q I mean but it was not implicit in that statement?

THE COURT: You can argue that to me, counsel.

MR. JONES: Yes, sir.

Q Did they move out when the tear gas bomb was thrown?

A They did.

Q How long a time occurred from the time he told them in effect to go down to the lunch counters was it before the tear gas was thrown?

A Judge, I would say it was about two minutes.

Q What transpired from the time he made the talk about the lunch counters to the time the tear gas was thrown?

A What transpired?

Q That is when the Sheriff asked them to break it up and that is when Cox turned around and the Sheriff didn't say anything, just stood there with his arms on his shoulders -- I mean folded and --

BY THE COURT:

Q Were any songs sung after that time?

A Oh, no.

Q No songs were sung after the time that the accused made the statement that he wanted them to go down to these lunch counters?

A No, sir.

Q The only thing that transpired after that from your testimony is that the Sheriff asked them to break it up?

A He asked them to break it up, and he was --

Q What did the accused do in response to his request to break it up?

A Nothing.

Q Describe what he did.

A Well, he just turned to the crowd and with his arms folded and then turned back to the center of the street.

Q Did you hear him say anything?

A I didn't hear him say anything, no, sir.

BY MR. JONES:

Q If he had said anything, would you have heard him say it?

A I don't know whether I would have or not. My attention was distracted somewhat by the presence of the officers down the street. I was looking to the police line to see what their formation was in case we needed to use them.

Q Now, when he folded his arms and turned around, did he face you and the Sheriff, Bryan Clemmons, sir?

A Well, you see, he faced directly to the Sheriff. I was down the street just a little bit from him.

Q But he wasn't looking at the group which he was leading at that time?

A No, no, he had his back to them.

Q And he, upon the Sheriff's order to move them out, he folded his arms and immediately turned around toward the Sheriff, sir?

A That's right.

MR. JONES: That's all.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q In other words, Chief, you were standing some distance from the Sheriff?

A That's right.

Q And all you heard was the Sheriff say, "I order you now to break it up"?

A That's right. Of course, the Sheriff said this over the power mike.

Q Right. You could hear that?

A Yes, sir.

Q Now, is it your testimony that Cox in response to that order faced the crowd momentarily and then turned and faced the Sheriff with a defiant air?

A That's right.

THE COURT: All right.

MR. PITCHER: That's all.

WITNESS EXCUSED

. . . .

MR. PITCHER: That's the State's case, Your Honor.

MR. JONES: Your Honor, we move for a directed verdict.

THE COURT: I am going to overrule that.

MR. JONES: To which ruling I except and ask that a formal bill be reserved.

MR. JONES: Your Honor, may we have a few minutes recess?

THE COURT: Yes.

(At this time court recessed for a short time and thereafter reconvened.)

MR. JONES: I would like to call Mr. E. R. Nilson to the stand, sir.

E. R. NILSON, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q State your name, please, sir.

A E. R. Nilson.

Q Mr. Nilson, what is your occupation?

A I am a cartographer.

Q Where do you live, sir?

A On Lobdell Avenue.

Q Is that in Baton Rouge?

A Baton Rouge.

Q Did you have an occasion at the request of the attorney for the defendant B. Elton Cox to make a map of the Courthouse setting near St. Louis Street, sir?

A Yes, I did.

Q I want to show you this map, sir, and ask whether or not you made it?

MR. PITCHER: I have no objection, Judge.

Q Would you testify whether or not this map showed a true and accurate measurement of how far the Courthouse is from the west curbing of St. Louis Street?

A Yes, that is from all records and all that I inquired on it. That is correct.

MR. PITCHER: May I interpose an objection at that point, Judge? I mean I didn't understand Mr. Nilson -- did I understand you to say that from the records available?

A Yes, sir.

MR. PITCHER: Well, then, this map wasn't made from you actually physically going on the ground and measuring it?

A I did not actually take a tape and measure it.

MR. PITCHER: I object then, Judge.

THE COURT: I am going to overrule it.

BY THE COURT:

Q What is it taken from?

A It is taken from the records. The width of the street is taken from the records over in the City-Parish Department of Public Works, the records there.

Q How accurate are they?

A Well, they should be correct. They have been using them for thirty-five or forty years now.

BY MR. JONES:

Q Is that the official map?

A That is on the official --

BY THE COURT:

Q What would be the best evidence of how far it was, those records or actual physical measurements?

A Well, actual physical measurements. I don't think they vary more than maybe a foot.

THE COURT: All right. To that extent, we will let it in subject to --

A I just didn't have time -- I mean I was requested yesterday to go --

THE COURT: We will let it

go to the weight of the evidence.

A I didn't have time to get out and make a physical check on it. I went over there and picked up the information from --

Q The best evidence, of course, is the actual measurements?

A Yes.

Q And you didn't do that?

A I did not -- I was not able -- didn't have time to make the actual tape measurement on it.

Q And how far does it show the Courthouse steps from the west curb of St. Louis?

A 103 -- about 103 feet.

THE COURT: Can you recall the measurement on that other?

MR. PITCHER: 101.

THE COURT: All right.

A I say it wouldn't vary more than a foot.

BY MR. JONES:

Q How wide -- how wide is the sidewalk on the west side of St. Louis Street according to this map?

A Ten foot.

THE COURT: That is what

it was on the other map, wasn't it?

MR. JONES: Ten-ten.

THE COURT: Ten foot, ten inches. All right.

A This is taken from the property line.

THE COURT: All right.

Q Did you have an occasion on December the 15th, 1961, to observe the protest demonstration group on the west side of St. Louis Street?

A Yes, I did.

Q According to your map, what space did they occupy on the street, sir?

A Well, I would say it was in the neighborhood of -- in front of this lot here, this one and a portion of this one (indicating). I don't know exactly how far they came down here, but they were cut off right about there (indicating).

Q Did they occupy any part --

THE COURT: When you say where, the record can't pick that up. Where did you point?

A It's at the north line of that service station there on the corner.

Q Did they occupy --

A Going north.

Q Did they occupy and block off the space at the service station?

A I didn't see them at that time in that area at all.

Q When did you observe them?

A I observed them when it was happening. When they were forming, we were standing in the Assessor's office watching. I don't recall that they had ever gotten beyond that -- there is a telephone pole or something about on that corner, and I don't recall that they ever got in there (indicating).

BY THE COURT:

Q When you point to the corner, you mean what corner?

A The corner of that lot.

Q Which corner?

A The northeast corner of this lot here that the service station is on (indicating).

THE COURT: All right.

BY MR. JONES:

Q About how much space along the west side of the sidewalk of St. Louis Street did they occupy, I mean in length?

A Around 180 or 190 feet.

Q Did you have an occasion to observe how deep they were lined up on St. Louis Street, whether it was three behind, four behind or five?

A No, I am sorry.

BY THE COURT:

Q How far did they extend that you saw?

A I said from here from the northeast corner of this service station lot (indicating) on up about three lots. I don't remember where it was cut off here. It would have been about 192 feet if they had taken in all three of those lots, but I don't believe that they extended that far up. I don't know, I mean I just didn't --

Q Well, you don't know --

A I didn't observe that particular feature of it, that's right.

MR. JONES: In connection with the witness' testimony, Your Honor, I would like to offer, introduce and file in evidence this map made by Mr. E. R. Nilson Map Service showing the width of St. Louis Street and the distance of the west curbing of the sidewalk of St. Louis Street from the steps of the East Baton Rouge Parish Courthouse and ask that it be marked D-1 for identification purposes.

Q Did you have an occasion to observe the conduct of that group assembled on that side of the street, on the west side of St. Louis Street, sir?

A Yes, I did.

Q How would you classify that conduct?

THE COURT: Describe it.

Q Describe it.

A Well, they walked in apparently pretty peaceful and started singing for a while, and I think they did a little praying, and then they started shouting, and I think it was the shouting about that time that they started throwing the tear gas.

MR. JONES: That's all. Your witness.

CROSS-EXAMINATION

BY MR. PITCHER:

Q Mr. Nilson, do I understand your testimony to be that this map introduced by the defense was made from the available records in the Department of Public Works concerning the location in front of the Courthouse?

A Yes, sir, that's right.

Q When was the last time that those particular records were brought up to date if you know?

A Well, the lay out of those lots and the houses on those lots -- the lay out on the lots was taken from the plat map.

Q Was that the 1933 map?

A 1930 map.

Q 1930?

A Yes. They were checked against the records that we have in the Assessor's office as to the ownership and whether there was any resubdivision of that land. There has not been since that time.

Q Since 1930, that is 31 years ago --

A Yes, sir.

Q Hasn't there been some additional construction and renovation on that street by the additional property owners?

A Yes, sir, there has been some additional -- that is taken -- the buildings that are shown on there facing on St. Louis Street were taken from the Sanborn map which was revised oh, within the past three or four months.

MR. PITCHER: Now, do I have the Court's permission to have the witness mark certain things on this map?

THE COURT: Yes.

Q Mr. Nilson, you are familiar with the ownership on the west side of St. Louis Street, are you not?

A Yes, sir.

Q Would you mark with this green pencil the location of the law offices of James H. Hynes?

A I believe it is either this building or this one because his wife owns these two lots. I wouldn't say which it was right offhand.

Q Just from your everyday observation, you observed momentarily this crowd across the street and described it.

A Yes, sir.

Q Now, you have seen the front of Jimmy Hynes' law office any number of times this past few years?

A Yes.

Q Now, isn't his building the first building with an offset?

A Yes, it is.

Q Would you mark it on that map?

A (The witness complies.)

Q Now, do you know who occupies the office next to Mr. Hynes, to the south?

A I believe Ossie Brown.

Q Now, would you mark that with a red pencil?

A (The witness complies.)

Q Now, do you know who owns the building south of Mr. Brown's office and between which building and Brown's office this alley runs?

A No, I don't recall who the owner is on this particular lot. I know this is Mrs. Stafford's in here. This was a National -- some -- I didn't get a chance to put the ownership on --

Q This is a boarding house, isn't it (indicating)?

A That is a boarding house, that's correct.

Q That is the one that is to the south of the alley, and Mr. Brown's office is to the north of the alley? Would you mark that "boarding house"?

A (The witness complies.)

Q Now, Mr. Nilson, did you have occasion to notice when you looked out of the Assessor's window, I mean out of the office of wherever you were --

A Assessor's office.

Q -- the fact that many of these people were standing off of the sidewalk line in this alcove of Jimmy Hynes' law office, did you notice that?

A I don't recall it.

Q You don't recall that?

A No, I sure don't.

Q All right, now. As an engineer and cartographer, would you say that the property line of the City of Baton Rouge is this line right here that I am indicating?

A That is correct.

Q Now, would you mark that line with a "Y" on one end and an "X" on the other?

A (The witness complies.)

Q And that's the property line of the City of Baton Rouge, is that right?

A Yes.

Q Now, anything west of that line, vacant space, is privately owned property, is it not?

A That is correct.

Q So that means to me that -- you didn't measure this offset?

A No, sir, I didn't.

Q But that offset on Jimmy Hynes' law office --

A About eight feet.

Q About eight feet?

A Yes, sir.

Q And the offset on Ossie Brown's law office --

A About ten, ten or eleven.

Q In other words, there is an area in there where these people could have been that you didn't notice that was privately owned property?

A That is correct, yes.

Q Now, if such testimony had been adduced on direct on the State's case, you would not contradict that, would you?

A No, sir.

Q If also, the State's witness has testified that this crowd extended from America Street, the corner of America Street, solidly to the north property line as you have indicated here, I believe, of that filling station, would you be able to deny that?

A Well --

Q Or did I understand you to say that as far as you could see from the Assessor's window, they were along about here (indicating)?

A That is correct.

Q But are you positive that they stopped there?

A No, I am not positive. No, but that is my impression of it, what I recall.

Q I believe you testified that you couldn't say whether they were three, four, five, six or seven abreast?

A No, I couldn't.

Q Would you say, Mr. Nilson, that they were pretty solidly packed?

A They were pretty solidly packed, yes.

Q And that while the original forming of the group was orderly, that it shortly turned disorderly with screaming and hollering?

A That's right.

Q And that shortly after you heard the screaming and hollering, you heard the tear gas and saw it?

A I saw it.

Q Now, of course, you didn't hear what Cox said to the crowd to make them scream and holler?

A No, I didn't hear that.

MR. PITCHER: That's all. Thank you, Mr. Nilson.

MR. JONES: Your Honor, we would like to have three, five, six or seven or eight persons to come and waxtight and take a measurement and see how much space they would occupy as to size.

MR. PITCHER: I object to that unless he can put up here, If Your Honor Please, the same people who were across the street. We don't know how skinny they were, how fat; we don't know how they were standing. We don't know whether there were five, six, seven, eight, nine or ten people, so I submit it's irrelevant.

MR. JONES: They were students.

THE COURT: I sustain that.

MR. JONES: To which ruling I object and ask -- except and ask that a formal bill be reserved.

MR. JONES: That's all. Thank you, Mr. Nilson.

WITNESS EXCUSED

. . . .

MR. JONES: Call Ronnie Moore, please.

RONNIE MALCOLM MOORE, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q State your full name, please.

A Ronnie Malcolm Moore.

Q Ronnie, where do you live?

A Lincoln Hotel, now.

Q Where are you now?

A East Baton Rouge Parish Jail.

Q Where is your home, Ronnie?

A New Orleans, Louisiana.

Q Are you a native of the State of Louisiana?

A Yes, I am.

Q Where were you born?

A New Orleans, Louisiana.

Q What are you in jail for now, Ronnie?

A Trespassing and disturbing the peace on a college campus.

Q Ronnie, are you familiar with this demonstration that was held on December 15th, 1961?

A Yes, I am.

Q Did you take part in that demonstration?

A Yes.

Q Were you arrested as a result of taking part in that demonstration?

A I was arrested on Scenic Highway for using a sound truck in connection with the demonstration.

Q And for what purpose were you using the sound truck?

A I was using the sound truck as --

MR. PITCHER: Objected to as leading and self-serving.

THE COURT: Overruled.

A I was using the sound truck as a method of free speech against the evil of discrimination which is inconsistent with the American philosophy of racial equality.

Q What was the purpose of the demonstration, Ronnie?

A The purpose of the demonstration was to point out to the world the necessity of eradicating the evil of discrimination.

Q What kind of discrimination?

A Racial segregation. We believe that racial segregation is something that is an injustice to all men. It is a violation of the Fourteenth Amendment of the Constitution which provides equal protection under the law for all American citizens, and we were protesting this.

Q You were protesting racial segregation?

A Definitely.

Q Did you at any time or do you know whether or not the defendant at any time had agreed or conspired to violate or break any law?

MR. PITCHER: Objected to, If Your Honor Please. It is calling for an opinion that he certainly can't give.

THE COURT: Don't ask him about the law. Ask him about --

MR. JONES: Your Honor --

THE COURT: Let's ask him about his activities. The law is a conclusion --

Q What is your activities, Ronnie?

THE COURT: What they did in concert with each other to do. That's --

Q What did you all do, you and Reverend Cox and others?

A Reverend Cox and many others were and we are today deeply concerned about the injustice of the South. We are deeply concerned about the prevalence of segregation. We are deeply concerned about segregated courtrooms, segregated lunch counters, segregated schools and the evil of segregation as it exists in the South, and because we are deeply concerned, we avowed ourselves to do everything humanly possible to eradicate this evil, and we are going to do this within the framework of the Constitution of the United States.

Q Have you planned to eradicate racial segregation by any violent means?

MR. PITCHER: Self-serving and objected to, If Your Honor Please.

THE COURT: Ask him what means --

Q What means?

A Our technique to eradicate the evil of discrimination is the technique advocated by Jesus Christ in the Sermon on the Mount, which is the philosophy of non-violence. At no time do we plan to raise a hand in combat. At no time do we plan to strike back, but we shall march in protest and we shall speak out against the evil.

BY THE COURT:

Q What do you plan to do?

A We plan to do -- well, the first thing, that we have done.

Q We will start with that. What have you done?

A Twenty-three students were arrested for picketing stores downtown which practiced racial segregation. We came down to prove that we are concerned as American citizens with the arrest of these students. We are concerned with the presence of racial segregation.

Q I know that, but how about the defendant here? Did he have any part of that?

A Reverend Cox was a part of the protest? Yes.

Q What part did he have?

A He merely lead the demonstration as I would have lead if I would have been there had I not been arrested.

Q What did he do in regard -- I am not talking about his purpose. I understand well from what you have told me the purpose. I just want to know what was done.

A Well, here once again, I can only give account to what he has done up to the point I was arrested. I did not come downtown.

Q All right.

A Up to this point, Reverend Cox helped us to do everything humanly possible to fight this evil. Now, exactly what he did downtown I cannot testify, but I know what he should have done and --

Q I didn't ask you that. I want to know the preparation for the demonstration downtown. That is what we are getting at.

A Reverend Cox is merely an advisor just as the other ministers in the community were. They gave us spiritual advice, and they told us there was a need for students to speak up.

THE COURT: Go ahead, counsel.

BY MR. JONES:

Q Did you all hold any meeting at any church within the community or in the City of Baton Rouge?

A We held meetings at two churches particularly in the City of Baton Rouge.

Q What churches were they?

A Camphor Memorial Methodist Church and St. Marks Methodist Church downtown.

Q What happened in those meetings? Let's take Camphor Memorial first.

A Well, in most of the meetings I presided along with several other students of Southern University, and we discussed this evil pro and con, and we thought of ways to combat the evil, particularly at the twelve stores downtown, the segregated lunch counters there. After discussing the need for someone to do something, we decided that we would boycott these stores. As a matter of fact, advocate a selective buying program, and we did this. We tried to negotiate with the managers downtown by telephone and through registered letters.

Q Did you go to them and talk to them first?

A We were denied this opportunity because they refused to negotiate with us.

Q Did you publish that you were protesting racial segregation by the news media?

A We made press releases in regard to several plans which was pertaining to the selective buying program.

Q Did you put out any leaflets?

A We put out two leaflets.

Q What was the nature of those leaflets?

A The first leaflet was entitled "Do You Want Freedom?" The purpose of this leaflet was to point out to the community this need to stand up against the evil of discrimination, racial segregation; and the second leaflet after a careful process of negotiating with the limited means at hand because the managers refused to negotiate with us, we put out the second leaflet which called for a selective buying program.

MR. PITCHER: Judge, just for the record, I am going to object to this on the grounds that it has nothing to do with the guilt or innocence of the accused and has nothing to do with the charges against the accused, and I must make a formal objection.

BY THE COURT:

Q Did the accused participate in that in anyway with you?

A The selective buying program?

Q Yes.

A Reverend Cox was in and out. Just as I said several other ministers came to our meetings, and he merely suggested things in the line of which should be done in combating the evil of discrimination.

MR. PITCHER: I withdraw the objection.

BY MR. JONES:

Q Go ahead. What did you do at St. Marks Church?

A At St. Marks we conducted a direct nonviolent clinic.

Q By that you mean what?

A This was a clinic --

BY THE COURT:

Q Is that the one where you had this program all planned? Show him that program. (The witness was shown the program.)

THE COURT: Is that the one you offered in evidence?

MR. PITCHER: Yes, sir.

Q Is that the program?

A Yes, this is the program.

THE COURT: All right, go ahead.

BY MR. JONES:

Q What did you do at this nonviolent clinic?

A As you can see, at the program we discussed the organizational structure of the Congress of Racial Equality. We discussed the history of CORE, and then we discussed the Gandhian philosophy, which is the philosophy based upon direct nonviolent action, which advocates at no time violence, which simply means to do everything you can as long as you exemplify the virtues of meekness, honesty, honor, human dignity and other virtues --

BY THE COURT:

Q That's all fine. What else did you do?

A Then after this we discussed the sit-in demonstration, picketing, freedom rides, voter registration, jail discipline and discrimination of job opportunities, and in essence we had, as you see, advocated --

Q Were you present at any time when any plans were made for this -- you remember after the arrest of the students -- I believe they were students. After the arrest of the students, did you and the accused do anything with regard to the downtown demonstration the following day?

A Reverend Cox was present at the church along with myself, and we discussed with the students as a whole, and as I said, some of the other ministers came in throughout the day after the students were unlawfully arrested downtown. They were concerned about the problem, too, and so the students decided we would hold a mass meeting on the campus that night, and I spoke at the mass meeting that night.

Q Did the accused speak at the mass meeting that night?

A Reverend Cox was there.

Q Did he speak?

A He uttered the -- one comment that night. That was, we should stand up, something to this effect.

BY MR. JONES:

Q Did at any time you all plan to come down here and intimidate the Sheriff and other attaches of this

Court.

MR. PITCHER: Objection.

BY THE COURT:

Q What did you all plan to do when you came down here? What was the idea of coming down?

MR. JONES: He is objecting to what he is charged with. He is charged with coming down here and intimidating the --

MR. PITCHER: He's not charged with anything, If Your Honor Please.

MR. JONES: I am talking about the defendant, Your Honor, and we want to know whether or not he came down for the express purpose of intimidating --

THE COURT: All right.

MR. JONES: -- the Judge, the Sheriff or any Court attache.

BY MR. JONES:

Q Did you come down with that express purpose of intimidating any of them?

A The purpose of the demonstration was not to intimidate anyone. It was not to threaten anyone. It was not to force anyone to do anything. It was to express how we felt about the problem, and this as an American citizen to redress our grievances with the Court officials, and we came down to redress our grievances, and we didn't come to intimidate -- if justice was an intimidation.

BY THE COURT:

Q What effect did you think that that would have on public officials? Was it calculated to have any effect whatsoever?

A It wasn't planned to have any effect. It was merely to express our feeling. I believe that justice moves the heart of every man. Whether he be a public official, whether he be a bandit or whether he be a hoodlum, if he has done an injustice, then justice should move his heart.

Q Who were you going to influence by bringing this demonstration downtown? Who was going to be affected by that? What kind of influence would that exert on anyone?

A It wasn't to exert any influence or pressure on anyone. It was merely to express how we felt about it, to peacefully assemble and to speak about our grievances.

Now, whether this would make the President of the United States move, I don't know. We weren't worried about making anybody move. We were merely concerned about exercising free speech.

Q Why pick on the Courthouse? Why come to the Courthouse?

A Because the students were there.

Q Well, what did you think that would accomplish?

A Well, the purpose --

Q They were there. Sure, they were there.

A Well, I mean, why not the Courthouse?

Q I asked you why the Courthouse.

A I mean to really reason with this, why couldn't it be the Governor's mansion?

Q Why come to the Parish Courthouse seat is what I want to know.

A Well, the only reason that we can give here is that it is a centrally located place, and we came there because we believe that we had a right to come there or anywhere else in protest of the evil of discrimination.

Q Did your appearance on the west side of the Courthouse have anything to do with the students upstairs?

A I don't know. I was in jail when the students came down. As to the west side of the Courthouse or not, I wouldn't know.

Q You didn't come to the west side of the Courthouse?

A No, I was in jail then.

Q Do you know why -- do you know other than to protest what you feel like has been discrimination against you and the other members of your race --

A This was our only reason for coming.

Q What other purpose did you have for coming?

A We had no other purpose other than to protest the evil of discrimination and segregation.

Q And the fact that you had twenty-three people down here that had been arrested the day before -- that was no reason at all to come to the Courthouse, in your opinion?

A Well, I don't think --

Q You had organized it, hadn't you?

A I don't think you are actually quoting me here. I said that the purpose of the demonstration, the reason why we came to the Courthouse -- all right, let's say there were several reasons.

Q All right, let's say what they are.

A To protest the evil of discrimination is number one, the students being there. They had been victims of this discrimination, and the reason why we came there would be the same reason we would go anywhere else. If a person was shot downtown and a mob had lynched him downtown, why shouldn't we go to the place of the incident to protest? If the students --

Q Well, then, the truth is that you were coming then to protest --

A The evil of discrimination.

Q -- the incarceration of those students in that parish jail, isn't that true?

A You see, it is not the incarceration alone.

Q Well, you felt they had been incarcerated because they had been discriminated against?

A That's right, because they had been discriminated against.

Q You thought they were illegally and unlawfully in jail, did you not? Isn't that true?

A Definitely, because we believe that picketing is a form of free speech.

Q I understand that, but didn't you feel that they were in jail illegally and unlawfully, and isn't it true that you came down here to protest that?

A We did not come down to protest just the arrest. The arrest is insignificant, but we came down to protest the evil of discrimination. Of course, it is not just putting them in jail but in essence that these persons were victims of this. The personalities are not concerned here.

Q I know but what --

A It could have been twenty-three hoodlums up there, Your Honor, the personalities are not concerned here. It is the problem that is concerned, that we are concerned with. The personalities are immaterial.

Q All right, let's assume that you have protested for that reason. What does that prove? I mean who will that affect?

A The effect of moral persuasion cannot be measured, Your Honor, but --

Q Who were you trying to morally persuade? Were you trying to persuade the other members of your race or members of the white race?

A We were trying -- all right. We were trying -- if there would have been Negroes around, if there would have been Italians, if there would have been Jews, if there would have been Catholics, if there would have been anyone, if the newspapers anywhere in the world would sympathize with the evil of segregation and they felt like changing their mind, I pray God they will, but our purpose was to protest the evil of discrimination. As to whose mind we would change as a result of our protest, this is left in the hands of Almighty God.

Q Did you expect to get supporters from the white race by coming down and doing that?

A As I said, once again, if the protest -- if the protest, Your Honor, was so tied up with justice that it moved the hearts of men, then I had nothing to do with it.

Q Was that calculated to move the hearts of any members of the white race?

A The purpose was to protest the evils of discrimination and segregation.

Q Was it for the purpose of getting support from other colored citizens from this community?

A Getting suport is a byproduct.

Q Did you think that by coming down here that any of the Judges or some of the police officials or anyone in the Courthouse may as a result of your protest against these people up there in the jail felt -- they felt some sympathy for that?

A This wasn't the purpose. This was a byproduct. If their conscience warranted it, it was a byproduct, you see.

Q Well, it was aimed at something --

A The aim was to protest the presence of segregation, and this could be anywhere, Your Honor.

THE COURT: All right, Mr. Pitcher.

CROSS-EXAMINATION

BY MR. PITCHER:

Q I believe you said you were arrested before the demonstration took place, is that right?

A Yes, sir, I was arrested on the Scenic Highway.

Q For violating an anti-noise statute, isn't that true?

A I don't know which statute it was.

Q You didn't care either, did you?

A No, I didn't say that.

Q Did you care?

A I am concerned with the --

Q Evils of segregation.

A I am concerned with justice.

Q Yes, and in your version of justice, you are willing to break any laws on the statute books, aren't you?

A No, sir.

Q You have, haven't you, broken numerous laws on the books to date?

A I have been charged, but the Court will have to determine whether I have broken these laws.

Q We will get around to that. Now, where were you at the time this demonstration, this peaceful demonstration and protest against the evils of discrimination took place?

A Well, the students began to move --

Q I didn't say anything about the students. I say where were you?

A Where was I when now?

Q When this demonstration took place across from the Courthouse.

A I was in jail.

Q And did you lead the singing of the students that were in the west cell block?

A We had twenty-four leaders up there then because everybody was singing.

Q All of those twenty-four were leaders?

A We had three thousand leaders. In the cause of justice the evil of discrimination is so prevalent until every man is a leader.

(There was an outburst in the courtroom at this point.)

THE COURT: Wait just a minute. I don't have to let anybody stay in this courtroom. As long as I run it, it is going to be quiet. If you don't believe I won't clear this whole courtroom, just keep that up. Go ahead.

Q Now, with respect to December 15th at approximately twelve o'clock high noon, if my information is correct, you had been arrested and placed in the west cell block of the East Baton Rouge Parish Jail, had you not?

A I had been arrested and placed in some cell block.

Q Well, do you know the directions of the compass from the jail where you are now?

A I sure don't.

Q What side of the Courthouse would you say you are on now? I mean when you are presently in jail, not here on the witness stand.

A I would have to be outside to really tell.

Q If it had been affirmatively established that this demonstration took place on the west side of the Courthouse, could you see that demonstration from the windows where you were looking out?

A No, we couldn't see anyone from the windows.

Q You couldn't see anybody from that cell block?

A Due to the fact that I think the cells were closed at that time. I don't know, but anyway the students were I would say six feet away from the windows and inside the jail, in this hallway, you know.

Q Well, what started the singing in the jail on December 15th at around noon?

A When I was taken in jail, the students were singing already, and I merely joined them. Most likely they were singing, I think I concluded this, I think they were singing because the other students were singing outside. As a matter of fact, they sang many times in jail.

Q Do you remember having a conversation with Sheriff Clemmons in the jail?

A Yes.

Q And did you at that time -- did the Sheriff tell you that what you were doing would probably lead to violence and bloodshed?

A Yes.

Q Did you tell him in the presence of Cox that no war had ever been won without violence and bloodshed?

A No, I didn't say that.

Q If the Sheriff says you did, he is incorrect?

A Right. I said that no war has been won without sacrifice. He mentioned violence and bloodshed.

Q I said didn't he ask you the question that what you were doing would lead to violence and bloodshed.

A And I said no war has been won without sacrifice.

Q Did you mean by that that if it took the shedding of blood, it would be worthwhile?

A I mean just what I said.

THE COURT: What is that?

Q What does that mean? What sacrifices are you willing to make outside of breaking the laws of Louisiana?

A There are some people like Benedict Arnold and there are others who are willing to make little sacrifices. I don't think that we have ever advocated blood and violence, and we shall never advocate --

Q Prior to your incarceration on the 15th of December, you were the recognized spokesman for the Congress of Racial Equality in East Baton Rouge Parish, were you not?

A I was chairman of the local group.

Q And as chairman of the local group, you made certain press releases and were interviewed by the A. P. and other wire services, were not?

A Yes.

Q In fact, you notified most of the news media of the plans of the Congress of Racial Equality with reference to their attack on the discrimination in this parish, did you not?

A I don't like the word "attack," their protest, yes.

Q Well, I won't argue semantics with you. In other words, you did notify them of the activities that CORE would enter into prior to those activities taking place, did you not?

A Sometimes, yes.

Q In other words, the idea being that if any violence occurred such as happened in Montgomery, Alabama, and other places where your organization has attacked the evils of discrimination, you wanted the news media together with all photographers and so forth that you could have present to attain nation-wide publicity, did you not?

A The purpose of our actions, the purpose is not to obtain publicity.

Q Then right there, just a moment. Right there, if that is not your purpose, why do you notify the news media in advance of attacks on places like McComb, Mississippi, where "Life" photographers and "Look" photographers are notified two and three days in advance --

MR. BELL: I object, Your Honor, irrelevant and immaterial.

MR. PITCHER: He is under cross-examination.

Q Why does the Congress of Racial Equality notify the news media two or three days in advance of these attacks on the so-called evils of discrimination if you don't want publicity?

A All right, let's get something --

Q Just answer my question. Why do you notify them if you don't want publicity?

A If you give me a chance, I will answer the question.

Q Answer it and then you can explain it.

A The purpose is not for publicity. Sometimes we notify the press in the effort to protest the evil of discrimination. In regard to the violence and in regard to the bloodshed in both of the incidents mentioned were not caused by the participants of the Congress of Racial Equality, my friend, it was caused by --

Q I am no friend of yours! Let's keep the record straight.

A Thank God!

THE COURT: All right. Let's ask questions, and counsel, those remarks, as you well know --

MR. PITCHER: If Your Honor Please, I don't have to be insulted by the witness.

THE COURT: That's right, but then on the other hand, counsel, just ask him questions and --

MR. PITCHER: Yes, sir, but I ask Your Honor to instruct him to answer my questions without gratuitous remarks.

THE COURT: The gratuitous remarks from either counsel or witness are not appropriate in the courtroom.

MR. PITCHER: Right, sir.

Q He hadn't answered my question yet, why did they notify the press two or three days in advance of their demonstrations or their attacks on segregation.

THE COURT: Well, let's find out one thing.

BY THE COURT:

Q Did you ever notify the press of any --

A Well, the press has called me and sometimes I have called the press.

Q Did you notify them? Now answer Mr. Pitcher's question.

A The purpose is to aid us just like we notify the churches to aid us in protest of racial segregation. The press is a form of free speech, I think.

BY MR. PITCHER:

Q Well, I have in my hand a newspaper clipping attributed to Mr. Jack Owens of Associated Press that appeared in the Baton Rouge papers on the 2nd day of December, 1961, with the headline (Reading): "CORE to Test Baton Rouge Facilities. Ronnie Moore, President of the Core unit here at Southern University, said he was gratified there were no injuries to the six who went to McComb from here and Southern University at New Orleans. Justice is coming, he said. The six returned to Louisiana Friday night." The rest of the story is with reference to the demonstrations to be held. Do you recall making that statement to the press?

A Yes, sir, I was gratified at the call of justice or the success of the cause.

Q That is one statement you made to them?

A Uh-huh.

BY THE COURT:

Q When did the defendant come down to Baton Rouge and first contact you?

A The defendant didn't first contact me. I met Reverend Cox three years --

Q How did you all meet?

A I met Reverend Cox sometime ago in New Orleans when I first joined CORE. Reverend Cox made -- came in as the other ministers of the community did.

Q When did you meet him in Baton Rouge?

A I met Reverend Cox in Baton Rouge the day of the clinic.

Q Which day was that?

A December the 8th.

Q The eighth. Was that the first time you had met him in Baton Rouge?

A Baton Rouge? No, I met him several times but pertaining to this matter, the first time.

Q But what I am talking about, until the time that you had met him at the clinic, how would you describe your relationship with the accused?

A We were close just like several students.

Q How often had you seen him?

A I mean here once again, you meet a person sometimes at those meetings and so forth.

Q But I am talking about before this clinic. Had he been in Baton Rouge before that time? How long had it been before he came to that clinic?

A I -- he might have been -- I am not too sure as to how long he had been in before, because I had met him at sometime during the year. Now, whether it was in Baton Rouge or somewhere else, I couldn't say, because I met Reverend Cox often.

Q But in regard to this clinic that you had, had you seen him prior to the clinic?

A Yes, I had seen him several times --

Q Can you recall when?

A I saw Reverend Cox in New Orleans several times.

Q Directly, did Reverend Cox have anything to do with the agenda of the clinic or the preparation of it?

A This agenda was planned by the Baton Rouge Chapter of CORE.

Q Did he -- was he a member of that chapter?

A No, Reverend Cox just happened to be a Field Secretary for the Congress of Racial Equality.

Q Well, that's what I am talking about.

A He is not a member of the local chapter.

Q He is not a member of your chapter, but he is a member of the national organization, is that right?

A Yes, I asked Reverend Cox to come in at the request of the group to give a discussion on the discrimination of job opportunities, just like I asked Mr. A. C. Belton to discuss voter registration at a workshop.

Q Then, actually, it was you who got the meeting together as the president of your chapter here?

A Yes, all chapter planners.

Q And your chapter planned that and asked him to come down and make a speech?

A Yes.

Q And where is he located? Where was he located when you asked him? New Orleans?

A I said I had met him several times and planned a workshop in Baton Rouge, and he said at any time he would come and speak just like Mr. Belton and others had promised. I contacted him for the workshop. I called him.

Q Where did you call him?

A Oh, he was in High Point, Carolina, then -- High Point, North Carolina.

Q To your knowledge, is that where he lives?

A Yes, I mean to my knowledge that is where he lives.

Q And you contacted him in High Point, North Carolina?

A As a matter of fact, I don't think I really personally contacted him then. The secretary of the group usually made -- I think she made all the contacts, but I think he was in High Point, North Carolina, when he was contacted.

Q Now, getting back to -- with regard to -- what activities do you know of that the accused took part prior -- in the planning of bringing this protest group, as you call it, downtown to Baton Rouge? Do you know what part he took in those activities of making preparations to bring the group downtown?

A Well, I know for sure he made no preparations for it. Reverend Cox spoke downtown because I was arrested, and someone had to speak to the students there. His role could have been the role of any American citizen.

Q I want you to talk about what you know now.

A Yeah.

Q What you know actually.

A That's what I'm talking about. You see, I was supposed to speak downtown that day, and when I was arrested, he just came and spoke.

Q Well, in truth and in fact, on that day you had the sound truck, is that right?

A Yes.

Q Where were you on the Scenic Highway?

A By Sewell Groceries which would be on Swan Street.

Q In any event, you weren't downtown when they were marching, you know, down this side of the street over here?

A No, I wasn't downtown.

Q When you were arrested, did you notice any of the group that you came up with?

A When I was arrested? Yes, the students were moving off campus then to come downtown.

Q They hadn't gotten downtown when you were arrested?

A They were stopped by police officers on buses. I saw this coming downtown. They tried to force them to come back, and they were walking downtown on the sidewalks after the traffic was obstructed by the police officers.

Q And this group of which you are a part of and which the accused is the Field Secretary for had decided to come downtown and make this protest against segregation at some time, isn't that true? How long did you make up your mind to have this thing before it took place?

A The protest -- we decided to protest after the incident.

Q After the arrest of the students, then you decided to protest?

A Yes, protest the discrimination. We had no --

Q Do you know whose idea it was in the group to come downtown in this mass protest of --

A In all sincerity, it was the idea of over three hundred students at the first meeting which was that night on campus.

Q I might ask you this. Was the accused present at that meeting that night?

A He was on campus that night, yes.

Q Did he do anything at that meeting that night?

A Yes, as I said, he made the comment that we should stand up, something to this effect. I can't recall, but it was no more than two sentences, because I spoke that night.

THE COURT: That's all the questions I have.

BY MR. PITCHER:

Q You say you see Cox several times a year. When did you first meet him?

A About two years ago in a clinic in New Orleans. I think somewhere around there. It might have been the first time.

Q Was he conducting that clinic in New Orleans?

A Yes.

Q He was --

A No, let me take that -- retract that statement. He wasn't conducting the clinic that time. He was a participant, because we had several personalities down there.

Q Would you name some of the personalities you had there?

A We had James McCann, Gordon Carey --let's see, I can't recall, and several members of the New Orleans CORE, and several students from Tulane University.

Q Who were the leaders of the clinic, I mean so-called?

A Rudolph Lombard was director of the clinic then. He is now a Vice-Chairman of the Congress of Racial Equality in New York City.

Q James Farmer is the Director, is he not?

A He is the National Director.

Q Have you ever met him?

A No, I haven't.

Q Would you say that was when you first joined CORE was some two years ago?

A Yes, some time --

Q And was that a clinic similar to the one indicated by the agenda of the direct nonviolent action clinic previously introduced in court?

A Yes, they were similar.

Q In other words, Reverend Cox, on the one I hold in my hand, conducted the discussion on organization structure of CORE at this meeting, did he not?

A Right.

Q And that was between four and five in the afternoon and at seven o'clock that night he made the main address, he spoke as the main speaker, Reverend Cox?

A Yes.

Q And the next day on Saturday, December the 7th, discrimination of job opportunities was handled by the Reverend Cox?

A Yes.

BY THE COURT:

Q You know what is really important to me. I want to know who was planned to be the leader of this group to come downtown?

A I was, had I not been arrested on Scenic Highway.

BY MR. PITCHER:

Q May I ask this question? In the structure of CORE as an organization, Cox would be superior in rank to you, would he not? He is an advisor, so to speak?

A When it comes to direct nonviolent action, yes. He is only to advise.

Q Only to advise, but he is to fill in in case his disciples get arrested, is that it?

A I happen not to be a follower of Reverend Cox.

Q How would you class yourself with reference to Reverend Cox?

A I was interested in the cause of justice and if this be a follower of Thurgood Marshall or Mr. Sargent

Pitcher, then I am a follower, anyone who is interested in the cause.

Q Why did you happen to mention the name of Thurgood Marshall?

A Just like I mentioned the name of Sargent Pitcher.

THE COURT: Let's go on.

Q Well, since your becoming a member of this organization, you have seen Reverend Cox several times, I believe you said?

A Yes.

Q Now, when that -- when was the demonstration planned that took place on December 15th?

A The night of December 14th.

Q The night of December 14th, and that was some week after the nonviolent clinic had been held at St. Marks Church?

A Yes.

Q And Reverend Cox on the campus of Southern University -- by the way, is he a member of that faculty?

A No, he isn't.

Q But he attended this meeting up there and in two sentences said, "We must stand up and be counted," is that the way -- or words to that effect?

A Something to that effect.

Q You mean that's all he said was just --

A He only made two sentences -- two statements, and it was something to that effect, because I spoke for nearly forty minutes somewhere in there.

Q What is your official position with CORE, the Congress of Racial Equality?

A I am Chairman of the Baton Rouge Chapter of CORE, which pays no money.

Q Who are the paid CORE workers in East Baton Rouge Parish?

MR. JONES: Your Honor, I object to that. That has got nothing to do with this.

THE COURT: Objection sustained.

Q Have you ever been to Chicago?

A No.

Q Are you familiar with the newspaper up there known as the "Herald-Dispatch" published in Chicago and Los Angeles, California?

MR. JONES: I object, Your Honor.

MR. PITCHER: He is under cross-examination.

MR. JONES: That's got nothing to do with the case, Your Honor.

THE COURT: Let's restrict our examination, counsel, with regard to whatever activities he's had in connection with this accused.

MR. PITCHER: I'm coming to that, Judge, right now with that question.

THE COURT: That's all I want it restricted to. It's just getting too far afield.

Q Are you familiar with that newspaper?

THE COURT: Wait --

A I have never heard of it. I have only heard of the "Chicago Defender."

MR. PITCHER: He has answered my question. I will get off that.

Q How did Reverend Cox know to take over this demonstration when you were arrested? Were there any plans for that in advance?

A No, no plans for Reverend Cox to take over. I say he took over as -- he spoke, rather. Now, you say "take over the demonstration," but he spoke there as any American citizen would. We had several student leaders who would have spoken.

THE COURT: He wants to know why did Reverend Cox, why --

A Well --

MR. JONES: Your Honor --

A There is no way I can say --

THE COURT: Just hold it.

MR. JONES: Your Honor, the defendant -- I mean the witness was not here so how would he know why he took over?

MR. PITCHER: Because it could have been planned the night before.

BY THE COURT:

Q What I would like to know is do you know why?

A No, I don't know why Reverend Cox spoke.

THE COURT: That's all.

BY MR. PITCHER:

Q But you know as a matter of fact that he did?

A Yes, I mean it is obvious.

Q With reference to the exhibits already entered in the record, I ask you if this is one of the handbills you referred to as being distributed by your organization?

A Yes, do you want to read this?

THE COURT: Identify them, please.

MR. PITCHER: That is State Exhibit-4.

Q I show you State Exhibit-3 and ask you if that is a photostat of the other handbill that was distributed?

A Yes, it is.

Q And at this time as I understand it, you are in jail charged with trespassing on the Southern University campus, is that correct?

A Yes, unlawfully.

Q What do you mean "unlawfully"? You unlawfully trespassed or you are unlawfully in jail?

A I am unlawfully in jail. I wasn't trespassing.

Q You were no longer a member of that student body, were you?

A I haven't received an official letter as of now telling I have to be off campus by a certain time.

Q You know such letters have been sent out?

A Such letters have been sent out I am told.

Q Were you directed not to come back to that campus by anybody on the faculty?

THE COURT: Let's get on that when you try him.

MR. PITCHER: Yes, sir.

Q Was this picketing planned in the hopes of having all these people arrested to express their disapproval of segregation?

A We exercise free speech in the form of picketing in the hope no one will be arrested as American citizens.

Q Let me ask you this. Do you recall a statement made by the District Attorney, the City-Parish Attorney --

THE COURT: Made by who?

MR. PITCHER: The District

Attorney of this parish, myself.

Q And Gordon Kean, the Parish Attorney, stating that we would not tolerate any violations of the law by anyone? Do you recall such a statement in the paper?

A Yes, I recall such statements.

Q Do you also recall a remark being made either by you or someone in your presence that if Sargent Pitcher could put five of them in jail, maybe he can put five thousand?

A I made the statement.

Q You made the statement. Go ahead, let's hear it.

A I made the statement to this effect, that if I must give up free speech, if one American citizen must give up free speech and be arrested, then I want to speak and five thousand more want to speak and if they want to arrest all of us for free speech, then they have the privilege of doing it, if they are going to take away all these rights from us.

Q That was the purpose of getting as many as three thousand students in front of the Courthouse so they could all be arrested at that time?

A No, the purpose was to protest segregation.

Q Let me ask you this. Why was it timed on December 15th?

A I mean maybe we should have come that night.

Q I am just asking you could it possibly be that twenty-three of your members had been arrested on December 14th, did that set this demonstration off?

THE COURT: He said so to me before.

A Yes, sir, I made the statement and I would like to make it emphatic that the students were arrested because of the evil of discrimination and segregation, and we came down to protest this evil.

Q And I believe you have said that justice will move even the heart of a public official, are those your words?

A I said justice will move the heart of any man.

Q Even a public official?

A A public official or sinner.

Q And that, therefore, you must have felt that this demonstration would have moved the heart of a public official --

MR. JONES: Your Honor, I object to the question. The District Attorney is expressing his conclusion. He is not asking a question.

MR. PITCHER: I am asking

for his conclusion, Judge.

A And I am about to give it.

THE COURT: All right. Give it.

A That we did not feel or we did not intend to move the heart of any state official. When you exercise a right, you don't do it to affect someone else. You do it because it is is your right to do it.

MR. PITCHER: Judge, could I have five minutes, please?

(At this time court recessed for a short time and thereafter reconvened.)

Q What time did the demonstration start gathering on Southern University campus on the morning of December 15th?

A Students started leaving the campus around 10:30.

Q And how did they leave, walking, riding or how?

A They left in cars, some left in cars, some left on the buses, some left in cabs and by other means if there be any.

Q Were there a few walking?

A They began to walk after the bus drivers were arrested and they were put off the buses, they began to walk.

Q Where were you with reference to position, say, at the time these students started walking down the Scenic Highway?

A I was being escorted in the police car downtown slowly.

Q Where were you arrested, I mean?

A I was arrested on Scenic Highway on Swan Street which is at the last entrance of the campus.

Q You were in a car with a loud speaker on it with some other people, is that right?

A Yes, when I was arrested.

Q When you were arrested. And at that time who was leading the procession on foot to Baton Rouge?

A There wasn't a procession on foot to Baton Rouge --

Q Call it what you want to, who was leading the students into town? Who was at the head --

A No one was leading the students into town. They were walking into town because they were put off the buses.

BY THE COURT:

Q How did they know to get to town?

A They knew we were going to come downtown to protest segregation. They left off the buses -- left off the campus, rather, to do it.

Q How did they know where to go?

A I had mentioned that night at the assembly place where we were going to meet in town to protest.

Q Had you mentioned that night at the program?

A We had mentioned -- I mentioned that night that we were going to meet downtown in front of the Courthouse to protest segregation.

BY MR. PITCHER:

Q Did you tell them you would meet in front of the Courthouse or did you say you would meet at the Old State Capitol grounds?

A No, in front of the Courthouse, and I told them what route to take that night.

Q Why then do you suppose they congregated at the Old State Capitol grounds?

A After they were shot with tear gas and vicious dogs were sicked on them --

Q No, no, don't get excited. I am talking about before the tear gas and vicious dogs were turned loose on them, they assembled at the Old Capitol grounds.

A Well, let's look at it this way --

Q Just answer my question. Why did they assemble there?

MR. JONES: I object because the defendant wasn't here. He was under incarceration, Your Honor.

MR. BELL: Objection --

A The assembly at the Old State Capitol was afterwards.

THE COURT: Answer Mr. Pitcher's question about how they would know to assemble at the State Capitol grounds.

A They would know according to what I had mentioned that night. This was highly incidental.

Q In other words, somebody changed your plans from the night before if you told them to assemble in front of the Courthouse, and when they did assemble, they assembled at the Old Capitol grounds. Somebody changed your plans?

A I wouldn't know who changed them because I wasn't there.

Q Right. Now, did you have the program that was going to be followed through in front of the Courthouse? Did you have a written program that you would conduct?

A A written program?

Q A pledge of allegiance to the flag, sing "America" --

A Just one minute.

Q Just let me ask the question. Did you have such a program?

A I had a program in mind, yes.

Q You had a program in mind. Did you have it on paper?

A I can't recall any writing of a program on paper.

Q Did you give Reverend Cox, the defendant, such a program?

A I know we had planned to --

Q I am not asking -- just -- please answer my question.

A Did I give Reverend Cox such a program?

Q Yes.

A I can't recall.

Q Would you deny you gave it to him?

A I am trying to figure out whether we brought anything on paper as to what we planned in regard to what we were going to sing and pray, and I had this mentally --

A Now, I know you didn't have three thousand mind readers with you. Now, what I am trying to ask you is this. How Reverend Cox, the so-called Reverend Cox --

MR. BELL: Your Honor, I object to the "so-called" --

MR. PITCHER: Well, there is no proof yet on this witness stand he is and I am still going on that basis.

MR. BELL: We can offer

proof, Your Honor, if the prosecution will just give us a chance.

MR. PITCHER: I will be happy to do that, counsel.

Q How did the defendant get a program on which apparently he was reading from, we will pledge allegiance to the flag, we will sing "God Bless America," then we will have a prayer and then we are going to disband and go home. If he had such a --

A No, he was on campus that night, he could have taken notes.

Q In other words, he could have made the program, couldn't he?

A He could have, I don't know.

Q All right, now, when you were arrested, you were in an automobile, and these students were walking down Scenic Highway?

A Yes.

Q And at the head of that procession, conglomeration or body or whatever you want to call it was the accused Cox. How did he get there?

A He wasn't there.

Q All right. That's your testimony. He was not there.

A My testimony is that I didn't see any leader. I saw students marching downtown, and I didn't see Reverend

Cox there.

Q You didn't see Reverend Cox that morning?

A I saw him that morning.

Q Where was he that morning?

A I saw him at Camphor Memorial Church that morning.

Q Was that where the demonstration gathered first or did they gather on the Southern University campus first?

A Some students came there first and some students began to come downtown in cars.

Q Well, who had given the time that the demonstration was to start. I mean that the procession would start to Baton Rouge? Who gave that time?

A I mentioned that time Thursday night when the students met on campus.

Q What did Cox do at the Camphor Memorial Methodist Church that morning? If you saw him there, what was he doing?

A Reverend -- let's see, this is back on December 15th morning. Exactly what the Reverend Cox do. That morning Reverend Cox was there and he -- I spoke to the students that morning.

BY THE COURT:

Q What did he do?

A That's what I am trying to figure, did he do anything that morning. He was just there. I can't recall exactly what role Reverend Cox played that morning. I know I spoke and the students began to leave and whatever roles he played that morning, I wouldn't be able to give account of.

Q You didn't see him do anything then?

A I didn't see him play any part. There was a possibility -- oh, there was a possibility. I won't mention possibilities.

Q But you didn't see him do anything?

A I didn't see him do anything.

BY MR. PITCHER:

Q If a Deputy Sheriff would testify that Reverend Cox came up and asked him what route they had to follow or --

MR. BELL: Objection, Your Honor.

Q -- what rules they had to obey, you wouldn't be able to say that was true or untrue, would you?

MR. BELL: Your Honor, I have to object. That is conjecture. That is speculation, Your Honor.

MR. PITCHER: Judge, I

intend to put --

THE COURT: He was there.

MR. PITCHER: That's right.

A If the Deputy would come up where?

Q Just about the time you were arrested, let me make it as specific as I can for you. Just at the time you were arrested or just a little bit before or just a little bit after, say in that close period of time, you were sitting in an automobile with a loud speaker, and Cox was at the head of this line marching to town. Is that true or is it not true?

A I did not see Reverend Cox marching to town heading any line.

Q You deny that he was marching at the head of that line?

A I would definitely deny it on the basis of my knowledge.

Q Now, you say that when you are not in jail you live at the Lincoln Hotel, is that right?

A Yes.

Q Did you live at the Lincoln Hotel between December 8th and December 15th when you weren't in jail?

A I was a student at Southern University, and I was attending classes everyday.

Q Where were you sleeping at night?

A On campus.

Q When did you start living in the Lincoln Hotel?

A When I was --

Q You almost said it. Go ahead.

A When I was what?

Q Forced off the campus.

A I didn't say that.

Q What did you say?

A Huh?

Q What did you say?

A Not forced off the campus, because the dean did not give a statement. I began to live in the Lincoln Hotel on January 15th. We never received any letter pertaining to the campus until January 18th, and I haven't received one yet.

Q You knew by advice given you by some of your friends or from some other source that you were a persona non grata on Southern University campus, did you know that?

MR. JONES: I object to that.

THE COURT: I think that is fair cross-examination of him.

MR. JONES: Unless he had notice, Your Honor, from the school, how would he know he was not --

THE COURT: Well, let him find out through cross-examination why he was living in the Lincoln Hotel then.

Q Why did you move to the Lincoln Hotel?

A On January 15th --

Q I don't care when you moved. Why did you move there?

MR. BELL: Your Honor, may I object? I don't see where this is relevant to the issues in this case, and I don't think that this --

MR. PITCHER: I say there is nothing extreme in my cross-examination --

MR. BELL: What is the purpose of this line of questioning?

THE COURT: I believe you are entitled to test his credibility, I certainly do.

MR. JONES: Your Honor, he is a free agent, and he can move wherever he wishes.

THE COURT: That might be, but he has made other statements on examination and other statements on cross-examination, and the District Attorney is entitled to test his credibility by what he says. Now, why -- why --

MR. BELL: Your Honor, are you overruling the objection?

THE COURT: Overruling it.

MR. BELL: Well, I can take a formal exception then and ask that a bill be reserved.

THE COURT: All right.

BY THE COURT:

Q Answer this question: Why did you go up to the Lincoln Hotel when you were formerly up yonder at the --

A I was attending school and I stayed at the hotel because some of the students were staying there and meeting every night.

BY MR. PITCHER:

Q Was Cox staying there?

A (The witness did not answer.)

Q You are under oath. Was Cox in that hotel at that time?

MR. BELL: I object to that, Your Honor. That is arguing with the witness, and the best evidence of that is the hotel records.

THE COURT: You can ask him whether he knows or doesn't know.

Q Was Cox there?

THE COURT: Overruled.

A On January 15th --

MR. BELL: I ask that a bill be reserved to that.

A -- Reverend Cox didn't come to the hotel until the night of the, I think it was close to his trial which was on the 18th.

Q Did you ever room with Cox in the Lincoln Hotel?

A I did not live in the room with Reverend Cox in the hotel.

Q Where was your room with respect to his room then?

A I mean it's up --

Q Just answer my question.

MR. JONES: Your Honor, I object to the question because the question is irrelevant and immaterial and has nothing to do with this case.

THE COURT: I overrule it and now you can take a bill on that because it is relevant to test his credibility. He has made a certain statement and let the District Attorney examine him about that.

MR. JONES: To which ruling I except and ask that a formal bill be reserved.

THE COURT: Go ahead. Answer his question.

A You asked what room I stayed in at the hotel?

Q No, I said where was your room with relation to the room that Cox was staying in. Was it on the same floor?

A Yes, I stayed in Room 404.

Q And what was his number?

A Reverend Cox stayed in 490.

Q Now, where did Reverend Cox stay on December 8th and 9th?

A December 8th and 9th?

Q At the time of the nonviolent clinic.

A Oh, he stayed in the hotel.

Q And how long did he stay there at that time?

A Oh, I wouldn't know exactly.

Q Well, let's ask it -- let me put it this way so you won't misunderstand it. From December the 8th to December 15th how many days to your knowledge did the accused stay in the City of Baton Rouge or did he ever leave, and if so, where did he go?

MR. JONES: Your Honor, I object to that question. How would he know where he was going?

THE COURT: Well, let him ask it to see if he knows. I overrule it and you can take a bill if you want.

MR. JONES: I take a bill and make it formal.

A I know Reverend Cox stayed in the city on the eighth and ninth. He came in that Friday on the workshop.

I cannot recall as to whether he stayed here all the way through that week. I don't believe he did.

Q How many times did you see him during that time, to your knowledge, to have meetings and discuss the situation?

A I remember I saw Reverend Cox definitely on the thirteenth, the fourteenth, fifteenth, sixteenth of December -- no, not on the sixteenth, because I was in jail, but on the fifteenth, that morning of the fifteenth I can testify definitely.

Q On what occasion were you staying in the Lincoln Hotel at the same time that Cox was staying there?

A On January 15th.

Q I believe you said you were there two nights or three nights while he was there?

A I was staying there. Reverend Cox's friend, several students were staying there. We were discussing many things.

Q Plans?

A We were discussing the Gandhian philosophy.

Q By the way, that Gandhian philosophy has changed lately, hasn't it? It used to be nonviolent, wasn't it?

A It is still nonviolent.

MR. BELL: Your Honor, I object to that.

THE COURT: Sustained.

MR. PITCHER: Well, he has been talking about the philosophy, and I would like to know what it is, Your Honor.

THE COURT: Let's talk about the demonstration and where --

MR. PITCHER: All right. If the witness would be --

THE COURT: Just like you were doing with Cox and what was he doing.

MR. PITCHER: All right, sir.

Q Did you ever stay in the same boarding house, rooming house or dormitory in the same room with the accused in this case any time from December the 8th through January 15th?

A I have never slept in any room anywhere with Reverend Cox.

Q But you would say that you met with him -- would you give me an estimate of the number of times between December the 8th and December 15th?

A Two, three times. I don't know.

Q Not counting the nonviolent clinic at St. Marks Church?

A I know definitely it was on the thirteenth, fourteenth, fifteenth. I saw him on those days, I am sure, the morning --

Q You also saw him on the eighth and ninth?

A Uh-huh.

Q But you don't say whether you saw him on the tenth, eleventh and twelfth?

A I couldn't testify to that because I don't know whether he was in town on those days or not.

MR. PITCHER: That's all, Judge.

MR. JONES: Are you through, Mr. Pitcher?

MR. PITCHER: Yes, I am through.

REDIRECT EXAMINATION

BY MR. JONES:

Q Ronnie, are you familiar with the signs that the students were carrying at the time they came down and demonstrated?

A The signs?

Q Yes. They were carrying signs on December 15th, 1961.

Are you familiar with those signs?

A No, due to the fact that several students made signs overnight after they were coming down to protest the next day. I can't recall seeing the signs on the fifteenth.

RECROSS-EXAMINATION

BY MR. PITCHER:

Q Do you recall the signs that they used on the fourteenth?

A Oh, yes.

Q You do. And those signs -- were those signs seized by the police or do you know?

A Well, apparently they were because the students were arrested and the signs were taken from them. We never received them back.

Q Didn't you know as a matter of fact that the first time this picketing took place these students or whoever they were were asked by the police to desist and advised that they were violating the law and that they brought nine of them, I believe, to the City Police Station, but released the signs to some other CORE members to be taken back to Southern University. Do you know about that?

A I don't know anything about the release of the signs to CORE members.

Q Well, to somebody else, to friends of the pickets?

A I recall that the students were asked to move on --

THE COURT: Is there any connection?

MR. PITCHER: Yes, sir, there is a connection.

THE COURT: All right.

MR. PITCHER: Well, I don't want to pursue it, Judge, it's all right. Thank you. That's all.

THE COURT: All right, that's all.

WITNESS EXCUSED

. . . .

MR. JONES: DeArmand Bailey.

MR. PITCHER: I am going to seriously object to any testimony by this witness on the grounds that he has been sitting, to my personal knowledge, in the courtroom during the entire trial today and has not obeyed the Court's order on sequestration of the witnesses, and I only think it is fair that I should be able to object to his testifying.

THE COURT: I will not let him testify if he was under the rule. Was he here when --

MR. JONES: Yes, sir.

THE COURT: All right. You are going to have to prove this by somebody else then. Do you have other witnesses that you can prove what you want to prove by him? Mr. Jones, have you got other witnesses?

MR. BELL: If Your Honor Please, I would like to have about a one minute recess to get our witnesses.

(At this time court recessed for a short time and thereafter reconvened.)

WELDON JOSEPH ROUGEAU, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q State your name, please.

A Weldon Joseph Rougeau.

Q Weldon, where do you live?

A My home is Lake Charles, Louisiana.

Q Are you a native of Louisiana?

A Yes, I am.

Q Are you in jail here now?

A Yes, sir, I am.

Q What are you in jail for now?

A I am in jail for trespassing on a college campus and disturbing the peace.

Q Do you know the defendant here Reverend Cox?

A Yes, I know Reverend B. Elton Cox.

Q How long have you been knowing Reverend Cox?

A I have known Reverend Cox for approximately two, three months.

Q Weldon, were you arrested on December 14th, 1961?

A Yes, sir, I was arrested on December 14, 1961.

Q Where were you arrested?

A I was arrested on Third Street in front of Woolworth's.

Q And what were you arrested --

A Not Woolworth's, I am sorry.

Q Beg pardon?

A Not Woolworth's. I was arrested on Third Street.

Q What were you arrested for?

A I was arrested for picketing or obstructing the normal and convenient use of the sidewalk.

Q And for what purpose were you carrying those pickets?

A I was protesting racial segregation and discrimination.

Q And the picket which you were carrying, what did it say?

MR. PITCHER: Objected to as irrelevant.

A It has been since --

THE COURT: What is the purpose of that? I am going to have to start limiting the examination in some way. The last time it went all the way to the formation of CORE. What --

MR. JONES: Your Honor, the purpose is to show that all the signs which they were carrying, nothing was implicit in those signs of violence or anything of intimidation.

THE COURT: You are talking

about the time they were arrested before the demonstration took place?

MR. JONES: Yes, sir.

THE COURT: What difference does that make?

MR. JONES: On December 14th. I will withdraw that question.

THE COURT: The signs that they had, we saw those in the moving picture, didn't we?

MR. JONES: Yes, sir.

THE COURT: Didn't I see them --

MR. JONES: Yes, sir, and you also saw the ones on December 15th in the movie.

THE COURT: Are you trying to show that they were the same signs?

MR. JONES: Yes, sir, the same type of signs.

THE COURT: All right, I will let you show that.

Q The sign which you were carrying, what did it proclaim?

A If I can remember correctly, the sign said, "Kress Draws the Black Line in Discrimination, Don't Buy."

Q Speak a little louder.

A "Kress Draws the Black Line in Discrimination, Don't Buy."

Q Then, it is your testimony that the activities in which you engaged was a part of the same activity in which Reverend Cox was engaging in on December 15, 1961?

A Yes, that was a part of the movement to protest racial segregation and discrimination.

Q Did at any time that -- in your plans, did you ever form a part of the plan?

A No.

Q Have you ever been told or instructed that you all would --

MR. PITCHER: I object to anything he was told, Judge.

THE COURT: Sustained.

Q Were you ever instructed by the defendant to do violence or harm to anyone?

A No, I was never instructed to do this, because it is inconsistent with my philosophy of nonviolence which is taken after emulation of Mahatma Gandhi, whom CORE emulates in his philosophy on nonviolence.

Q Is it your contention that the entire movement was in protest of racial segregation?

A That is correct.

MR. JONES: Your witness.

THE COURT: Now, let's just limit it to his direct.

CROSS-EXAMINATION

BY MR. PITCHER:

Q Where did you first meet the accused in this case?

A The accused?

Q Cox.

A Reverend Cox, I met Reverend Cox at a meeting I think.

Q At a meeting where?

A In Baton Rouge.

Q And what date was that?

A I can't remember correctly. It was some time in the latter part of October or the early part of November.

Q And where was the meeting held?

A Reverend Cox, myself and a few other friends had a hamburger at Swan House.

Q How often did you meet with Reverend Cox after that?

A I never did count the times that we met.

Q Frequently?

A If frequently can be an indefinite number, I can say that.

BY THE COURT:

Q How many?

A How many? I never did count them.

BY MR. PITCHER:

Q But you say --

BY THE COURT:

Q Could you make an estimate?

A An estimate, no.

BY MR. PITCHER:

Q Would you say you met with him on an average of once a week?

A Once a week? No, I did not meet with Reverend Cox once a week.

Q Did you meet with him on an average of once every two weeks?

A An average of once every two weeks, I cannot say that.

Q Did you meet on an average of once every month?

A That would be better.

Q And you have only known him how long?

A I would say three months.

Q And did you meet with him on December 8th at the St. Marks Methodist Church?

A I think Reverend Cox was in attendance at that --

Q You think -- were you there?

A Yes, sir, I was there.

Q Did you see the program that was followed that night?

A As an attendant, I did see it.

Q You saw that?

A Yes.

Q And that program shows that the accused B. Elton Cox made three speeches, two on December the 8th and one on December 9th. Did you hear those speeches?

A Yes, sir, I did.

Q When did you meet with him after that?

A After December 8th, I cannot recall.

Q Did you meet with him on -- you didn't meet with him on December 14th because you were in jail, isn't that right?

A Right.

Q Now, had you been ordered not to come on the campus at Southern University?

A I had been ordered to leave the campus at 9:00 A. M. that morning. However, my time was extended, and I was not given a day to depart.

Q Who extended your time?

A Dean Ulysses S. Jones.

Q How did he extend it, in what way?

A My time --

THE COURT: What does

that have to do with this?

MR. PITCHER: I have a reason, If Your Honor Please. He is under cross-examination, and I am testing his credibility.

THE COURT: Go ahead.

A The Dean of Men extended my time because I had to turn in an R. O. T. C. uniform, a breakage book and at 9:00 A. M. that morning, these things had not been done.

Q When were you arrested on the campus?

A January 18, 1962.

Q At what time of the day or night?

A It was approximately 5:30, it seems.

Q And how had you been advised --

BY THE COURT:

Q What date was that?

A January 18th.

BY MR. PITCHER:

Q And how had you been advised to withdraw from the campus?

A How had I --

Q Yes. Verbally, in writing or what?

A First verbally and then --

MR. BELL: Your Honor, I would like to object. I think the witness has already shown he is presently under a charge of trespassing, and I don't think -- anything he may say might incriminate him.

THE COURT: I will sustain the objection.

BY THE COURT:

Q Let me ask you, you were in jail at the time this demonstration took place, you know, on the other side of the street?

A Yes, sir.

Q You were in jail here at that time?

A Yes, Your Honor.

Q Did you have any knowledge or notice in advance that it would be there or that any of your friends or students would come downtown to protest your being in jail? Did anyone let you know that in advance?

A No, Your Honor.

Q You had no idea that they were coming?

A No, sir.

Q How did you all happen to be singing?

A Why did we sing, the prisoners?

Q Yes, did you sing up in the jail?

A Yes, we did.

Q And why were you singing in jail?

A We heard someone singing down, I mean below the jail out on the street.

Q Could you see them?

A No, Your Honor, we could not see anyone.

Q From the songs they were singing, is that how you knew that it was someone of your group, or did you know it was someone from your group?

A I knew it had to be someone who was concerned with the freedom movement because the song that was being sung at the time was "We Shall Overcome," and whether it would have been someone in my group or someone else, as long as that individual was concerned --

Q You heard them singing that song?

A -- with racial segregation and discrimination --

Q You heard them singing that song from the jail?

A Yes, Your Honor.

Q And that's why you knew it had to be someone in your group protesting racial discrimination and segregation?

A Someone from the freedom movement.

Q You had no advance knowledge that they would be there?

A No, Your Honor.

MR. PITCHER: I have no further questions.

MR. JONES: That's all.

WITNESS EXCUSED

. . . .

MR. JONES: Reverend Cox and we want the record to show that he is going to affirm rather than swear, Your Honor.

THE COURT: Affirm?

MR. JONES: All right.

B. ELTON COX, the defendant, called as a witness in his own behalf, being first duly affirmed, testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q State your full name.

A Benjamin Elton Cox.

Q What is your profession?

A Congregational clergyman.

Q That is a minister?

A Field Secretary of the Congress of Racial Equality, Pastor of Pilgrim Congregational Church, High Point, North Carolina.

Q Where is your home?

A Presently I am living in High Point, North Carolina, born in Tennessee.

Q What part of Tennessee were you born?

A Whiteville.

Q Reverend, you are being charged here on several different charges for participating in a demonstration on December 15th, 1961. Did you take part in that demonstration?

A On the 15th of December, I did.

Q Did you plan the demonstration?

A I did not.

Q Who planned that demonstration?

A The Executive Committee of the Baton Rouge Chapter of the Congress of Racial Equality.

Q Did you have any intention of violence within your mind in participating in this demonstration?

A Not as a minister of the gospel nor as Field Secretary of CORE.

Q What was the purpose of your participating in this demonstration?

A A Field Secretary travels in the interest of CORE to make sure that the organizations in the local situations follows the philosophy of nonviolence. Therefore, a Field Secretary like myself acts as a confidant, a mentor and advisor.

Q Were you in Baton Rouge as of December 8th -- 7th and

8th, 1961?

A I believe that is correct.

Q Did you attend any meetings during that time?

A I attended the nonviolent action clinic held at St. Marks Church two days. I gave three speeches as has been indicated here in the courtroom.

Q Did you ever give or make a speech on December 15th, 1961, to a group of students, of colored people, assembled on the west side of St. Louis Street?

A I did.

Q Did you have permission from any of the city or parish officials to make that speech?

A A group of people who identified themselves, that is, a couple of them, as officials of the parish or city law enforcement agencies asked me what we intended to do. I stated what we intended to do and they nodded in agreement and as the film indicated the other day in the courtroom, it showed me nodding my head in agreement to the time and what we agreed to do, et cetera, et cetera.

Q Did you outline your program as to what you were going to do?

A Yes, I had a printed copy of the program, and I showed it to the officials who were standing there.

Q Where did you get that printed copy from, Reverend?

A I don't recall who gave it to me. It was discussed after the meeting on the campus of the evening of December 14th. The next morning someone gave it to me at the church. I believe that the chairman had a copy and I had a copy for my own personal records. When we travel as Field Secretary, we have to make reports of our activities. Therefore, we get a printed copy of everything that is printed or typed that is relevant to our reports to the national office. Therefore, I had one in my vest.

Q Did you get permission as to the time as to how long you were to hold your program on St. Louis Street?

A According to our conversations with about five or six of the law enforcement agencies, they asked me what I intended to do, and I showed them the program and at least three or four of them looked on, and I said, "We are going to sing one stanza of 'God Bless America' or either one of our national anthems of the nation and say the Lord's prayer, and we are going to have a speech which I said I would give and would take about seven minutes and make a pledge of allegiance to the flag, and in the summary statement we said that my speech would be seven minutes and the whole program should take between seventeen and twenty-five minutes, as I recall.

Q Did you carry on your program as you had outlined it to the city officials?

A We carried on the program except we omitted one of the songs. I think it was "Oh, Say, Can You See," because when I got down to that I forgot the first stanza myself, so I dropped it off.

Q About how many was in that group along with you, Reverend?

A It has been estimated that in the whole demonstration of December 15th that there might have been anywhere from fifteen to thirty-eight hundred. This is hard -- I don't know how many. I am not a good judgment of large audiences except maybe in a close situation like a church, I might be able to judge.

Q Do you recall whether or not the entire west sidewalk of St. Louis Street was occupied by members of your group?

A No, when we first assembled, they went down and covered half of the Texaco Station. I walked down with a couple of people and motioned them back, and then we were about two abreast, and I saw that so many were on the other street that could not get down there to the block. Therefore, I walked down and had them to abreast from three to five persons, and when they abreasted themselves there, I then motioned across the street for the other persons who were standing there to come across and they did. Therefore, what I am trying to say is that the block was not completely blocked as the film illustrated the other day.

Q Do you recall, and I think there has been some testimony to that effect, that you would have to confine your program and your assemble to the -- on the west side of St. Louis Street?

A Yes, I remember one of the law enforcement officers who said, "You have to stay on this side of the street," and we agreed to this. We couldn't go on the other side anyhow because they had it blocked off with various members of the law enforcement agencies here in the parish and city.

Q Did you or any member of your group, to your knowledge, have the intention of influencing any public official in their administration of duty?

A Indeed not.

Q What was your purpose and intent in being here or being there at that time?

A To carry out the philosophy of my organization and the Christian church of which I am a member to protest anything that is not lovable, to protest racial discrimination and racial segregation wherever it depicts itself.

MR. JONES: Your witness.

CROSS-EXAMINATION

BY MR. PITCHER:

Q Where did you attend elementary schools?

A I attended elementary school in Kankakee, Illinois.

Q Did you graduate?

A I graduated from elementary school in that city.

Q What colleges have you attended?

A I have attended Joliet Junior College, Joliet, Illinois. I have attended and graduated from Livingstone College, Salisbury, North Carolina. I graduated from Howard University School of Religion. I have attended the Episcopal Theological School in Cambridge, Massachusetts.

Q What degrees have been conferred upon you and by what college?

A I have an A. B. degree from Livingstone College and a Bachelor of Theology degree from the School of Religion of Howard University.

Q I didn't catch the last one.

A A Bachelor of Theology degree from the School of Religion at Howard University.

Q Was that where you received your theological training?

A Part of it. While at Livingstone, I took one year at Hood Theological Seminary at Livingstone.

Q When were you ordained as a Congregational minister?

A I was not ordained as a Congregational minister. I was ordained as a Methodist minister.

Q When did you become a Congregational minister?

A I became a Congregational minister in 1959, I believe.

Q How long did you remain a member of the Methodist Church?

A Oh, I joined the Methodist Church back in 1946 or 1947 and joined the Congregational some time in 1959.

Q And when did you say you were ordained as a Methodist minister?

A I was ordained a deacon in 1950, 1949 or 1950, in Detroit, Michigan, at an annual conference. I was ordained an elder in Winston Salem, North Carolina, in 1953, in the month of November.

Q What is your -- when did you join the Congress of Racial Equality?

A Oh, as an official card-carrying member, this past spring.

Q You say "this past spring," you mean the spring of 1961?

A That would be the spring of 1961, yes, sir.

Q You have testified that you went to school in Joliet, Illinois, I believe, and you must be familiar with this newspaper that I had reference to a minute ago published in Chicago, I believe, and in Los Angeles, California?

MR. JONES: I object, Your Honor --

MR. PITCHER: He is under cross-examination, I believe.

THE COURT: I am going to overrule it. If you want to take a bill, take one.

Q The "Herald-Dispatch," are you familiar with that paper?

A I might have heard of it. I don't recall.

Q Reverend, I am going to show you a copy of that paper on Saturday, August 19, 1961, and ask you if you recognize your picture on the second page?

A I do.

Q Do you know Mr. Edward Blankenheim?

A I do.

Q Do you know Henry Thomas?

A I do.

Q Would you read into the record what is underneath that picture, please?

MR. JONES: Your Honor, I

published in Chicago, I believe, and in Los Angeles, California?

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A I do.

Q Do you know Henry Thomas?

A I do.

Q Would you read into the record what is underneath that picture, please?

MR. JONES: Your Honor, I

object to reading anything in the record from that paper because it is not connected with the incident of December 15th, 1961, with which the defendant is charged, it is irrelevant and immaterial and has no bearing on this case whatsoever.

THE COURT: Well --

MR. PITCHER: If Your Honor Please, it has a very definite bearing on this case and a very definite bearing on the presence of this man in this community. You notice he is reading with a great deal of enthusiasm, and I would like to have him read it into the record.

MR. JONES: Your Honor, we don't even know whether or not that is a proper issue of that paper.

THE COURT: All right. I think it is fair cross-examination. First of all, I would like to know, if that is possible why he is here in the parish, and I think it is a fair thing for him to bring that out, and I think further that he has another right to test his credibility.

MR. BELL: Your Honor, further, we don't even know whether that is a valid publication. I think that should be established first before the witness be allowed to testify to the authenticity of what he reads in the paper. Let the prosecution first establish --

MR. PITCHER: Your Honor has ruled that it is fair cross-examination. That's what I am after and his purpose in the community.

MR. JONES: To which ruling I except and ask that a formal bill be reserved.

Q Would you read it please?

A (Reading) "CORE National Director, James Farmer, announced expansion of the field staff --

THE COURT: Wait just a moment.

BY THE COURT:

Q Turn over the paper and identify the paper that you are reading from.

A National Edition of the "Herald-Dispatch."

Q What is the date, where is it published?

A Chicago, Illinois, Saturday, August 19, 1961.

Q Have you ever heard of that paper?

A I don't recall.

THE COURT: All right. Go ahead. Read the article.

A (Reading) "CORE National Director, James Farmer, announced expansion of the field staff with the addition of Rev. B. Elton Cox, Edward Blankenheim and Henry Thomas. Currently they are assigned to work on Freedom Ride; later they will create as much trouble in the South as possible, to keep the issue before the world's press and discredit the U. S. as much as possible. CORE has an increased budget for this purpose. Rev. Cox is a Congregational minister from High Point, North Carolina; Blankenheim was a CORE member in Tucson, Arizona; and Henry Thomas has been active with the sit-in movement in Washington and Virginia. All three are paid CORE's Freedom Riders."

Q Do you recall that article?

A I have never seen it before in my life. I don't agree with the contents whatsoever.

BY MR. PITCHER:

Q All right then. I will read to you at this time from a speech from Senator James O. Eastland in the United States Senate of the United States made on May 25, 1961, and ask you if you are the same Elton Cox he makes reference to.

MR. JONES: Your Honor, for the same reason I object to the reading of this article in the newspaper and at the same time it's hearsay.

THE COURT: And for the same reason I make the same ruling.

MR. JONES: I ask that a bill be reserved.

Q Quoting in part from Senator Eastland's speech (Reading):

"Mr. President, it is interesting to compare the --"

MR. BELL: Your Honor, before Mr. Pitcher reads that, if he is going to read from the article of the Senator from Mississippi, let him read the whole article to get the true context of it.

THE COURT: All right.

MR. PITCHER: I will be happy to do it.

Q The speech contained in the "Congressional Record" of the Senate made May 25th, 1961, by Senator Eastland, James O. Eastland of the State of Mississippi. I will read when they are talking. (Reading):

Mr. Eastland. Mr. President --

The Presiding Officer. The Senator from Mississippi is recognized.

Mr. Scott. Mr. President, will the Senator from Mississippi yield to me?

Mr. Eastland. I must ask the Senator from Pennsylvania to excuse me, for I have two speeches to make. Thereafter, I shall be glad to yield.

The Presiding Officer. The Senator from Mississippi declines to yield at this time.

Mr. Eastland. Mr. President, the agent provocateurs who have descended upon the southern States in the name of "peace riders" were sent for the sole purpose of stirring up discord, strife, and violence. "Peace riders" is a revered Communist term, an old Communist technique. The movement was masterminded and directed by an organization known as the Congress of Racial Equality, called CORE. This organization is the war department of those who sell hate, collect donations, and sow the seeds of discord in this country. Since its inception, its creed has been lawlessness and its tatics have followed the pattern set by Communist agitators the world over.

Prior to the sit-in demonstrations that started in the southern States in 1960, CORE confined its activities to cities in the North and border States, and received little public notice. With the advent of the lawless sit-in, it moved in and took over the direction of the whole movement. Steve Allen signed a recent fund raising letter given wide circulation by CORE; and in it he said, in part:

> How did the sit-ins, first tried by CORE in 1942 and used every year since, suddenly become southwide? How do the students think of their movement? To give you a personal, first-hand understanding I am enclosing a copy of "Sit-ins: the Students Report," with a foreword by Lillian Smith and six student articles from representative movements across the South.

In my judgment, one of its objectives is to manufacture incidents, and thus raise money, from the dupes, for the international Communist conspiracy.

The booklet attached to the letter contains the maudlin stories of the student trespassers that were trained by CORE, and were arrested in various cities in the South when they violated the law by trespassing on private property. As Allen points out, the foreword of the pamphlet is written by Lillian Smith, the leading white Southern integrationist, a member of the advisory committee of CORE, and the author of the most abominable book written in the 20th century, the miscegenation novel "Strange Fruit." Lillian Smith has also been associated with numerous organizations and activities cited as being Communist or Communist fronts.

I submit that when a person belongs to a large number of Communist-front organizations that follow the policies of the international Communist conspiracy, that person is aiding and abetting the Communist movement in the world--a movement which, if not halted, will result in a blood bath in our own country, because the United States will fight, if necessary, in order to prevent Communist domination of our country.

The "freedom ride" planned by CORE and commenced in Washington on May 4, was the master effort of this organization. I have been informed that it was devised deliberately as a prelude to various high-level meetings in Europe, as a propaganda method to embarrass the Government of the United States in the handling of international affairs. Certainly those participating in the ride have been guilty of such practices of embarrassment, many times in the past.

Long before the bus reached Alabama, certain members thereon were involved in instances of violence. The Washington Evening Star of Monday, May 15, 1961, reports that at Rock Hill, S. C., two men were beaten, and that one of them was Albert Bigelow, 55, the former Navy captain who ran afoul of the law when he attempted to sail a ketch into the Pacific Ocean Lucifer Testing Area, in 1958, to protest the nuclear bomb test. The same news story reports that a day later, at Winnsboro, S. C., one Thomas, a Howard University student, and James Peck, 47, of New York City, were charged with trespassing when they attempted to eat at a roadside restaurant. Strange as it may seem, this selfsame Peck was also aboard the ketch in the Pacific Ocean when it ran afoul of the law attempting to sail into the nuclear testing area in 1958. Peck was the first "hero" of the "freedom ride." He came back from Birmingham parading the bandages and stitches received in the altercation that took place at the bus station.

It must be admitted that this is the closest that Peck ever came to "warfare" of any kind. According to a recent news story in the New York Herald Tribune, in World War II, when Peck was called up in the draft, he declared himself a conscientious objector. Unlike most conscientious objectors at that time, he would not become a medic, nor would he agree to take part in other noncombat activities connected with the military. As a result, he spent 3 years in the Federal prison at Danbury, Conn. He first became associated with the Congress of Racial Equality in 1946.

The Herald Tribune's story reports that in 1949 Peck chained himself to a railing in the White House and staged a sitdown strike, which was ended by Secret Service agents.

Peck was arrested in Nevada in 1957, along with others, for trying to force their way through the gate of an Atomic Energy Commission proving ground, allegedly in the cause of pacifism.

The next year Peck was again under arrest, this time as a member of the crew of the ketch previously mentioned in the nuclear testing area of the Pacific.

There are strong indications that Peck was associated with the Committee for Nonviolent Action, which conducted demonstrations against the Polaris building shipyards of the Electric Boat Co. in Groton, Conn.

Mr. President, do I have to say more to show that this man, the leader of CORE, is disloyal to his country?

Well, I am going to give more.

Back on August 31, 1947, Peck was arrested at Cliffside Park, N. J., and charged with disorderly conduct. In July and August of that year he was active in demonstrations charging racial discrimination at Palisades Park and Cliffside Park, N. J.

The Communist paper Peoples' World of July 23, 1960, reports that a certain Jim Peck was scheduled to lead a 2-day conference of opponents of the death penalty in the Chessman case.

While the current letterheads of CORE do not carry the name of James Peck, reference to those used in 1956 indicate that his title was "editor" of a publican called Corelator, which was the official publication of this organization.

Mr. President, in my judgment, this man is a Communist agitator and organizer of the most dangerous kind.

CORE could not rely on "student trainees" for the master "freedom ride." Its core were its own agent provocateurs with the longest possible record of experience in activities inimical to the security and welfare of the United States.

Mr. President, it is incredible that the American people can be humbugged and deceived by an organization such as this.

I have another letter mailed by CORE on February 16, 1956. It describes what I mentioned at the outset in regard to CORE's original activities in northern and border cities in this language. It reads:

> In the cities where CORE has operated, advances toward integration have occurred. In recent years, the border cities, St. Louis and Baltimore, have seen dramatic CORE victories. The method works. When I first joined CORE's advisory committee years ago, I could not have foretold that the ratio of success to failure would be so high.

This letter is signed by one A. J. Muste, who is still active on the advisory committee of CORE. Who is A. J. Muste?

In 1957 A. J. Muste got up a delegation for the purpose of observing the procedures of the Communist Party's 16th National Convention on February 9 to 12. J. Edgar Hoover said:

> The Communists boasted of having impartial observers cover the convention. However, most of these so-called impartial observers were handpicked before the convention started and were reportedly headed by A. J. Muste who has long fronted for Communists * * * Muste's report on the convention was biased, as could be expected.

Those are the words of the great Director of the Federal Bureau of Investigation, Mr. J. Edgar Hoover. Who wants further proof of the Communist origin of this group that wants to plant discord in this country on the very eve of international conferences which mean so much to the welfare of future generations of Americans?

Muste has been connected or associated with no less than 32 Communist-front organizations or activities. A more complete story of his relation to banning nuclear weapons tests and his activities in relationship to the Communist conspiracy will be found in material which I shall ask to have printed in the RECORD. If the American people had to depend on pacifists like Peck and Muste for the defense and security of this country, there would be no country--only a Russian satellite.

Mr. President, in further examining the individuals who make up the advisory committee of the "War Department for Racial Agitation," we find a close interrelationship to the NAACP. Allen Knight Chalmers, longtime national treasurer and member of the board of directors of the NAACP, is on the advisory committee of CORE. A report of the House Un-American Activities Committee on Chalmers' connections with organizations or activities connected with the Communist conspiracy is included, and I ask unanimous consent that several inserts bearing on this subject may be made a part of the RECORD at the conclusion of my remarks.

The Presiding Officer. Without objection, it is so ordered.

(See exhibit 1.)

Mr. Eastland. Mr. President, Dr. Algernon D. Black, longtime member of the national board of directors of the NAACP, is also a member of the advisory committee of CORE. Dr. Black's record as revealed by the House Un-American Activities Committee, is replete with connections in organizations and activities connected with the Communist conspiracy. The long record of Dr. Algernon D. Black, is revealed by the records of the House Un-American Activities Committee.

Mr. President, I ask unanimous consent that this record be printed in the RECORD at the conclusion of my remarks.

The Presiding Officer. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and it is so ordered.

(See exhibit 2.)

Mr. Eastland. Mr. President, Earl B. Dickerson, onetime national vice president and a member of the national legal committee of the NAACP, is also listed as a member of the advisory committee of CORE. The long record of Earl Dickerson's affiliation with Communists or Communist-front activities is available from official sources. I ask unanimous consent that this record be printed in the RECORD at the conclusion of my remarks.

The Presiding Officer. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and it is so ordered.

(See exhibit 3.)

Mr. Eastland. Mr. President, A. Phillip Randolph, longtime vice president of the NAACP, is also a member of the advisory committee of CORE. Randolph's record, as revealed by the records of the House Un-American Activities Committee, is also available from official records. I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

The Presiding Officer. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and it is so ordered.

(See exhibit 4.)

Mr. Eastland. This list, Mr. President, is sufficient to illustrate the nature of the interlocking directorate and that the interlockers have also been connected with many organizations and groups other than CORE and the Communist movement.

Mr. President, it is interesting to compare the advisory committee of CORE as it existed in 1956 and its make-up in 1960 and 1961. As long as CORE was confining its activities to Northern and border cities, it is a fair inference that certain classes of agitators were indifferent to its operation. When it moved into the South, Martin Luther King and Ralph Abernathy, the two preachers who have been in the forefront in agitating violence against the white people, joined hands with the masterminds of CORE in organizing the freedom riders and became members of CORE's advisory committee. One might say that Martin Luther King took over where CORE left off--or has CORE left off? At least King attempts to claim credit for the organization of parties for the subsequent buses.

Martin Luther King and Abernathy are one of a kind with the so-called Reverend Elton Cox, one of the original freedom riders. He is the person who, when arriving in New Orleans, called for "marry-ins--racial intermarriage because love is colorblind anyway." Mr. President, no language on earth is more intended to incite and foment violence in Southern areas, or in any area, than is this.

James Peck held a press conference at the office of Charles S. Zimmerman, vice president of the International Ladies' Garment Workers Union, 218 West 40th Street, when he returned from Birmingham. Also present at that press conference was Henry Thomas, the 19-year-old Negro boy who was arrested with Peck at Winnsboro, S. C., charged with trespassing when they attempted to eat at a roadside restaurant. Charles S. Zimmerman is a member of the advisory of CORE. The record of Charles Zimmerman's association with Communist-front activities will appear at a later point in my remarks.

Mr. President, I ask unanimous consent that the record be printed in the RECORD at the conclusion of my remarks.

The Presiding Officer. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and it is so ordered.

(See exhibit 5.)

Mr. Eastland. Mr. President, since CORE has started directing its operations into the southern areas of the United States, other leaders in organized labor have joined the directorate of CORE. Foremost among these is Walter P. Reuther. Reuther has spent years trying to obtain respectability since those days in 1934 when he and his brother worked in an industrial plant in Russia. The words that they transmitted back to the United States in a letter which appeared in the August 14, 1948, issue of the Saturday Evening Post are well worth repeating today. The letter ended with the statement:

> Carry on the fight for a Soviet America.

Mr. President, that is what CORE is doing today. It is carrying on the fight for a Soviet America.

The portions of the letter as appearing in the CONGRESSIONAL RECORD of August 2, 1955, will be attached at the end of my remarks, along with a report of the House Un-American Activities Committee in regard to Reuther's association and affiliations with Communist or Communist-front activities in the United States.

Mr. President, I ask unanimous consent that the portions of the letter and the report be printed in the RECORD at the conclusion of my remarks.

The Presiding Officer. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and it is so ordered.

(See exhibit 6.)

Mr. Eastland. Mr. President, other members of the advisory committee of CORE who have been listed at one time or another as being connected with front organizations of various kinds and character are: Roger N. Baldwin, Lillian Smith, Ronald B. Gittelsohn, Ira DeA. Reid, and Goodwin Watson.

I ask unanimous consent, Mr. President, that the record of their association with Communist-front activities be printed in the RECORD at the conclusion of my remarks.

The Presiding Officer: Is there objection to the request of the Senator from Mississippi? The Chair hears none, and it is so ordered.

(See exhibit 7.)

Mr. Eastland. Mr. President, is any further proof necessary to establish that the "freedom riders" have been sent into the South with the deliberate intent of fomenting and provoking violations of the laws of the States which they intended to visit and did visit? If these be pacifists, it is a tragic commentary on our times that the Governors of Alabama and Mississippi have to call out the 31st National Guard Division, members of which have been in the forefront in sacrificing their lives in the valiant defense of this country in Korea, in World War II and in World War I, to defend-- and protect-- these self-proclaimed pacifists from violence. No area on the face of the earth has more demonstrated its ability to maintain peace and domestic tranquility than the Southern States of our country. In spite of outside agitation, the harmonious relationship, the mutual affection that today exists there between the white and colored races is more marked than it is in any other area on the face of this earth where the black and white races live together.

Mr. President, the day has come when these agent provocateurs must be stopped.

The day has come, Mr. President, when the Communist movement must be stopped, and this is part of the Communist movement inside the United States.

Mr. President, I salute the Governor and the officials of my State for the prompt, efficient, and peaceful treatment that they extended to these riders who entered the State of Mississippi for the deliberate purpose of violating the laws of Mississippi and fomenting strife and discord.

I salute the people of Mississippi for their courage, their intelligence, and their patience. This is the first time they have come face to face with the worldwide Communist conspiracy. They have acted well.

I ask unanimous consent that certain documents bearing on the Communist record of people to whom I have referred be printed in the RECORD at the conclusion of my remarks.

The Presiding Officer. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and it is so ordered.

(See exhibit 8.)

MR. PITCHER: Exhibit 1 without reading it all is the record of Allan Knight Chalmers.

I will be happy to make this available to you. Exhibit 2 is the record of Communist-front affiliations of Algernon D. Black.

THE COURT: How much more do you have?

MR. PITCHER: I am through. I am just giving the exhibits that I have referred to in the speech.

THE COURT: Read the whole article.

MR. PITCHER: Sir?

THE COURT: Finish reading it.

MR. PITCHER: I am finished with the article. That's it. This is the attachments he made.

THE COURT: All right. Finish with the attachments. Just complete the whole thing.

MR. PITCHER: Do you want me to read the whole works?

THE COURT: No --

MR. PITCHER: I finished

his speech but these are attachments that he made to his speech, the records of these people and Communist-front organizations.

THE COURT: Well, that is sufficient.

Q Are you the same, as Mr. Eastland says, the so-called Reverend Cox that made that statement in New Orleans?

A May I ask you a question? May I show him my credentials so he will stop saying "so-called" to let him know that --

Q I wasn't saying that, I was repeating the Senator's remarks.

A Well, you called me "so-called" in this courtroom yesterday.

Q I was quoting Senator Eastland's speech then and I knew it well.

A But you weren't quoting Senator Eastland yesterday when you called me "so-called."

Q I ask you now --

THE COURT: I tell you. Let's do this. You don't call him "so-called" and refer to him as "the accused" or "the defendant," as it may suit you, Mr. Pitcher. I don't want to have any further argument about that, and you may show the Court your credentials. (The witness complies.) This says (Reading): "Certificate of Enrollment as a Minister of the United Church of Christ. This is to certify that the Reverend B. Elton Cox is a Congregational Christian minister with a ministerial membership in the North Carolina State Conference," and under that it says, "Congregational Christian Association Conference, which as of this date is acting also as an association of the United Church of Christ, has upon his request been enrolled as a minister of the United Church of Christ," signed "J. Taylor Stanley, Registrar of the Convention of the South,

Congregational Christian
Association Conference,"
dated September 13, 1961. Now
let's carry on.

Q Are you the man referred to by Senator Eastland as the person, and I quote (Reading): " - - who, when arriving in New Orleans, called for 'marry-ins--racial intermarriage--because love is colorblind anyway,'" were those your words?

A Those are not my words. They are partially my words, and I will be very happy to tell you what I said.

Q I will be happy to hear you say.

A Perhaps you have read of certain catchy phrases in the movement of racial equality called "sit-ins, vote-ins, swim-ins, skate-ins, drink-ins, flush-ins, sleep-ins," and another one of these which I have formed is a "marry-in," and the "marry-in" is designed to remove from the laws of the statutes of the states which says that a man may not marry a person outside his race, and the reason for this "marry-in" is because racial integration sexually has been going on ever since the first twenty Negroes were brought here in the year 1619; and if you don't believe that, just look at me.

Q Are you now saying, Reverend, that quoting the Bible, "The sins of the father shall be visited unto the third generation"?

A I am not quoting that.

Q Do you agree with that?

A I am saying that the first twenty Negroes brought to this country in 1619 were black --

THE COURT: Let's go with regard to the statement.

BY THE COURT:

Q Did you make that statement or how did you make it? I think that was the question.

A I used the phrase "marry-ins" and following with the statement I just made.

BY MR. PITCHER:

Q And you are now also calling, as I understand it from newspaper articles again, for church "join-ins" on February 11th, 1962?

A I did not tell anyone that there would be a join-in on February 11th. The gentleman who interviewed me at the airport which you indicated in proceedings of yesterday said, "If you have this, when would you suggest it?" I said it will probably be on race-relations Sunday, which happens to be February, the second Sunday in February.

Q Well then, you were misquoted in the press on that occasion, is that right?

A I am very often misquoted in the press, as I am sure you are.

Q Then we have something in common, Reverend, you are right.

A Thank you.

MR. PITCHER: Judge, I don't believe I offered this picture identified by the Reverend in the record. I ask leave at this time to introduce the picture, subject to his remarks, naturally, that he denies it and mark it State-10.

MR. JONES: I think I objected to the reading of it, and I also object to the introduction of it into evidence and ask that a formal bill be reserved.

THE COURT: All right, reserve a formal bill and request that the answer of the witness and all testimony and remarks of the Court be made a part thereof

MR. PITCHER: And at this time, If Your Honor Please, since counsel asked me to read the whole article, for the benefit of Miss Rose, I offer and file in evidence the speech made by Senator Eastland with the attachments found in the "Congressional Record" of the Senate for May 25, 1961, and ask leave to supply photostats.

MR. JONES: I also object to that, Your Honor, on the grounds that --

THE COURT: What?

MR. JONES: Are you admitting it into evidence?

THE COURT: Well, it was read into the record and you can state your objection to him offering it.

MR. JONES: I object and ask that a formal bill be reserved.

THE COURT: I sustain your

objection so you don't need to.

MR. PITCHER: You sustained his objection?

THE COURT: Yes.

Q Reverend, I am going to ask you this question. Are you now or have you ever been a member of the Communist party?

A I have never --

MR. BELL: I object to that, Your Honor.

A I am not.

THE COURT: You don't want him to answer?

Q Are you or have you ever been a member of an organization cited as subversive by the House Un-American Activities Committee --

MR. JONES: I object --

Q -- the Attorney General's office or the Senate Internal Securities Committee?

MR. JONES: I object to

that, Your Honor, because he doesn't know all those organizations. It might have been cited as subversive.

THE COURT: Well, all right. Ask him if he knows.

Q You say you don't know or you haven't been a member?

A I haven't been a member, but I don't know whether I now belong to an organization which has been listed as a Communist-front organization or that is, I ought to add.

MR. PITCHER: I believe that's about it, Judge. Thank you.

THE COURT: Well, I want to ask you something before you leave.

BY THE COURT:

Q Why was it that you were giving the speech? Why wasn't it some of the other members of the chapter in this parish? Why did it have to be you?

A When the chairman --

Q I am talking about here.

A Yes. When the Chairman of Baton Rouge CORE was arrested, I walked over to the car and asked them, "Are you under arrest?" A Sheriff's deputy hollered back, "Yes," as if he is going to tear my head off, and some of the students had proceeded as instructed by Mr. Moore, and as the Field Secretary, in order to keep this thing nonviolent and orderly, then it was my duty as the Field Secretary over Louisiana and North Carolina to take over and see that this thing is followed out as planned. Therefore, I walked across the street and I asked Mr. Henderson over there, I believe he is a Captain. I identified myself, and I said I am a Field Secretary for CORE and my name, and I said we are having this march downtown and I would like to keep it orderly, and I would like to get any ideas from you. He hollered at me as if he is going to chew my head off. He said, "We are going to keep it orderly. We are going to keep it orderly." And then as the students were on their way downtown, I tried to get downtown to try to catch them downtown to try to keep the thing orderly as we are nonviolent, and when we got downtown here --

Q That was in accordance to your duty as Field Secretary --

A That's right, to keep things in order that they follow in nonviolent pattern.

Q This wasn't put on by your organization, the national headquarters of CORE, was it?

A No.

Q It was put on by this one, wasn't it?

A Local --

Q Local chapter?

A That's right.

Q Why was it necessary for you to supply or replace any of their officers in the leadership?

A I have the authority to do this as Field Secretary.

Q Who is the Vice President of the local chapter here?

A He just went back to jail.

Q Which one?

A Rougeau.

Q Who was next -- would he have been next in command?

A Yes, as Vice-Chairman.

Q And who would have followed him?

A Ordinarily, the pattern followed with the Secretary.

Q Well, isn't it also true that Ronnie Moore testified he was picked up even before the demonstration got to town?

A That's right.

Q Well, his function was to be in a sound truck talking to the students on the way down. Was he going to ride all the way following them walking?

A I am not sure how the design was, how he was to go. I know that he was supposed to conduct them downtown until they reached the area.

Q Well, you were there when they were walking around the Capitol?

A Yes, when I arrived there. When I got downtown there were -- a number of students were around the Capitol that were abreast.

Q How did you happen to come to town?

A I came to town in a car.

Q Whose car? Your car?

A No, when I found out that hundreds of students had started downtown and the leader had been arrested, then it was my idea to get downtown and catch them before, to pick up this leadership and keep things orderly.

Q You knew in advance, however, of what the actual program was to be?

A I had one for my own files. I had the program.

Q When did you actually really assume control or leadership of the group in reference to position and location in town?

A At the Capitol Building, the Old Capitol, it is called.

Q Would you give me the sequence of that program if you recall?

A As I recall --

Q Now, tell me about when you got to the Capitol, and tell me what part you played in it at the Capitol and tell me what part you played in it until it ended.

A As I recall, when I got to the Capitol, the students were then on their way down the street, I imagine down across the street from the bus station, the Greyhound Bus Station. They were walking around and I was trying to catch up to get in front and find out who was up front and so forth and to line them up until as many students as possible got downtown, so I got in front of them and stopped them and told them to get over to the side of the fence. Do not block all the sidewalk. I walked up and down the sidewalk to keep them over to the side.

Q That was at the State Capitol?

A That's right. While we waited for the rest of them, according to the time schedule on the program, two or three of the officers came over and one identified himself and this gentleman here sitting on the end here (indicating), police officer, came over and said -- I don't remember the exact words, but the Inspector who testified here today, his statements were pretty accurate. He asked who was in charge and no one said anything, and when I heard --

Q You are talking about Mr. White right there?

A No, not this gentleman here (indicating). He was in the courtroom but he is not in here now, but anyhow he came over and identified himself and showed me his badge, and I identified myself, and he asked, "What are you here for," and he asked me to disperse the group and send them back home, and I told him we had a program and we were on our way down to the Courthouse. At that moment I didn't know where the Courthouse was, but I knew it was somewhere nearby. He said if there was any violence, he was going to charge me and pointed at me, and I said that if there is any violence, it will not be perpetrated by us, we will receive the violence. This gentleman here was directing another officer to take pictures of as many of the --

Q Which officer?

A That is him sitting on the end behind (indicating). He had a gentleman there in a yellow raincoat snapping pictures and knowing very well that this is an act of intimidation as far perhaps as the expulsion of the students. I had the students to turn around so that he couldn't get a good picture of them, and I stood in front of the camera two or three times to make sure that he didn't get pictures of them, because I know this is intimidation throughout the South. When the time came for us to move on, we moved on across the street and as stated -- we are not to block streets. When we get to the corner, the crowd, and the light changes, we stop. I remember distinctly going down by this parking lot, we crossed in front of this -- we came from the State Capitol, crossed the street and passed, I think it was a Negro ambulance place or funeral home or something, got back to the parking lot and I remember distinctly a Negro person who was working there was about to back out two white ladies' car. One gave an exclamation and said, "Oh, my God, we will never get out of here now with this crowd." I happened to have been across this particular driveway, and I reached back and stopped them and one of the other ladies said, "Thank you very kindly." I helped them until their car was backed out, they got into the car and went about their business. We came on down, I saw the officers, Sheriff's deputies, City Police and State Troopers lined up and as we started down, some one, two or three of the officers approached me, and I think Chief Wingate White was one of them, and I don't recall who asked me the question, "What do you plan to do?" All I know is that I talked to about five or six of them, that is, I spoke to this group of gentlemen, and as the film indicated me talking with them, they asked me what was the program, and I listed the program as it was, and as I recall, the program listed one stanza of "Star Spangled Banner," the Lord's prayer, pledge of allegiance to the flag, a short talk, and I believe the last thing on there was the freedom song, which has become a sort of national anthem for a civil rights organization --

Q What is the title of it?

A "We Shall Overcome." They said, "How long do you think it is going to take?" I don't remember which officer asked me this question, but I remember --

Q Do you remember this officer right here, our Sheriff (indicating)?

A Yes, I remember him.

Q Do you know Major White (indicating)?

A I remember his face since I saw the films.

Q And do you recall talking to either one of them?

A I talked to about five or six of them. I don't know --

Q You don't recall who you talked to?

A Not exactly, not by -- all I know is that they said, "All right, but you must stay on this side of the street, and how long do you think it will take?" I said we are only going to sing one stanza of these hymns, so I don't know whether I said three to five minutes per hymn, but a hymn usually takes about five minutes. I said the speech will be about seven minutes, and I believe someone said, "How long do you think the whole thing is going to take?" I said surely between seventeen and twenty-five minutes. I might have said twenty minutes, but I know that there was twenty in there. I know this is where some of them get the idea of seven. The speech was seven minutes. The whole thing was estimated at seventeen to twenty minutes or twenty-five. Then we marched down two by two and as I indicated earlier when I saw they were down to the corner blocking the Esso -- Texaco Service Station, I believe it is, I asked them to move up and walk down. Then when we abreasted ourselves from two to five, as the film depicted, we asked them to line up from three to five, and as the film showed we did not block the total sidewalk because there were white men walking behind us and then one Negro walked behind us, so as I say, we didn't block it, and when they were abreast and still some of the people on the other side of the street, and I would estimate about seventy-five white people were on the other side of the street with the deputies and the other officials of this parish, the law enforcement agencies, and we went through the ritual and got to the second hymn. As I indicated earlier, I had forgotten the first stanza myself, so I didn't sing "Oh, Say, Can You See," that is very difficult --

Q Do you know that is our national anthem?

A It is but at this moment, trying to follow it and trying to keep in mind the time that I told the officer, I didn't want to start it because we sang one patriotic song.

Q Which one was that?

A "God Bless America," one stanza of that.

Q Well, when you brought them down -- were you at the front of the group or not?

A I was one of the gentlemen in front.

Q And you don't remember which of the police officials met you by name but you recognize them now?

A I recognize the gentleman here that I have already indicated, Wingate White I believe was there and Sheriff Bryan Clemmons.

Q Did you hear the testimony of Sheriff Clemmons that he asked you to break it up?

A I would be very happy to list that for you.

Q All right. Tell me about that.

A We went through the program, and when I finished speaking, I believe Sheriff Bryan Clemmons said, "All right, you have had your demonstration that we permitted," or something to this effect, and then I said, "All right. It's lunch time. Let's go eat." I said, "There are twelve stores we are protesting. A number of these stores have twenty counters," and this is figuratively speaking, "twenty counters, they accept your money from nineteen. They won't accept it from the twentieth counter," and I said, "This is an act of racial discrimination. These stores are open to the public. You are members of the public. We pay taxes to the Federal Government and you who live here pay taxes to the State."

Q Let me ask you that. Was that on the program the night before?

A The program, as I said, I secured it from one of the executive members out there.

Q I know but was it on the program for you to announce to them to go to the counters like you just explained?

A I don't recall if that was printed on there or not.

Q Whose idea was it?

A Well, if it was on the program, it was whoever printed it. If it wasn't on the program, it evidently was mine.

Q Do you recall?

A No, I don't recall. I am sure that they took a photostatic copy of everything when I was placed in jail and that evening they got a copy of it somewhere.

Q What kind of program was it?

A It was a typewritten program on 8 x 11 --

Q You would remember or I would think you should remember whether or not that was on the program or not. You don't remember?

A It might have been, Your Honor, but I am not sure. So, as I said, in listing my sequence here, after my talk, Sheriff Bryan Clemmons, I believe, took the battery public address system, and I said, "All right, let's go eat," and at this moment, singing came from the jail, and in response some of our members started crying and responded in jubilation and exhortation and then at this moment I believe Sheriff Bryan Clemmons hollered, "Move them out."

Q To be fair with the law enforcement officers and the Sheriff that were out there at that time, do you think that maybe they might have noticed some of the emotion among the crowd, and that is what alarmed them?

A I am not sure, Your Honor. I do know that --

Q You know that while you all were singing on one side of the street and then up in the jail some of your members who had been incarcerated and were singing from the other side of the street, didn't that present somewhat of an emotional situation to some of those who were there protesting their release? Did you notice or feel any emotion yourself or did you notice or feel any emotion on their part? Do you know what I am talking about?

A I think I do, but may I challenge one statement, Your Honor? We were not protesting their release.

Q I say protesting, you know, being illegally arrested, as we have heard here?

A Yes, I am not sure if there were any emotion from the white crowd --

Q I am talking about from the members of your own group. I noticed you just mentioned momentarily that some of them appeared to be crying --

A I saw tears flowed from young ladies' eyes when they heard the jubilation from the singing from the jail.

Q By that, I mean then that we can assume from what you saw there and from the fact that they were there protesting their illegal incarceration in jail that some of them became emotional about it, is that a fair statement?

A Yes, I think that --

Q That's a fair statement?

A I think that if I walked in the hospital and my wife was having a baby, I would become jubilant about it. As -- says, to make sure they get the record straight, as I recall it, the singing from the jail, the response of exultation and jubilation from the group. Sheriff Bryan Clemmons, I believe it was him who hollered, "Move them out," and the next thing I heard down at the right of the block one tear gas shell went off and then this group dispersed, and as the film indicated, I reached forward with my hands to say, "Don't run," because I knew they would be trampled, and I tried to reach down and to catch them, and they were going every which way because no one can stand tear gas, not even Your Honor, and as the film indicated, I was in the middle of two other fellows who made the last -- who were the last ones to leave through this alleyway, and I was holding onto one fellow, I believe, because one of the tear gas bombs hit him, and he was standing two feet from me, hit square in the chest, and as the gas went out, it hit me in the face, that is, the gas hit, so all of us, so we hollered, "Don't rub your eyes. Don't run." But many of these officers here will testify or do recall that many people were trampled.

Q Let me ask you this. Do you recall the Sheriff -- do you remember when he called to you, "All right, you have had your demonstration. Now, let's go on. Let's break it up." Do you remember that?

A That's right.

Q Did he say that?

A He did, and I said "All right -- "

Q What did you do in response to that?

A I don't recall exactly what I did, but I heard testimony here in this courtroom that I threw my hands out in some kind of way, and I have heard that

I was quoted --

Q You heard them say that you said, "Don't move."

A Yes, I have heard this on three or four testimonies. I am sure that this is wrong. I am sure this is amiss, it's incorrect. Someone is misquoting me here. After Sheriff Bryan Clemmons said, "You have had it -- "

Q You admit that you tried to stop them from running though?

A Stop them from running from the tear gas because I knew they would be trampled and many of them were trampled. I saw many bloody knees and people regurgitated all over the ground --

Q Why when Sheriff Clemmons told you to move them out didn't you move them out?

A When he said, "Move out," I said it is time to go eat and then the singing started from the jail. They became jubilant and at this moment Sheriff Bryan Clemmons said, "Move them out." Someone threw the first tear gas shell --

Q Then, isn't it true that they didn't even respond to your command at that time?

A When I said, "Let's go," they would have gone, but I am saying simultaneously the singing came from the jail, and when the singing came from the jail, there was exultation and then the loud speaker voice came out saying, "Move them out," as you would hear on TV on "Raw Hide" and one of the officers evidently got happy with one shell, and when he let his shell go, the others joined in, and I understand from the remarks of many of our persons that many faces of the white race showed disgust when they let the shells go including Mayor Christian.

Q Let me ask you something. You have been, as a Field Secretary, you have been, I suppose in other cities, is that correct?

A I have, Your Honor.

Q And each time you come into a southern city, either as the Field -- as you explained it, as Executive Secretary --

A No, Field Secretary.

Q -- Field Secretary. Each time, as you have explained it, have you had demonstrations in other cities and been a part of demonstrations in other cities in connection with your activities in CORE, you know, prior to your coming here?

A Prior to coming here, yes, sir.

Q Well, what was the reaction of the people there?

A In the sit-in movement in 1960, we had a sit-in movement of high school students at dime stores at High Point, North Carolina, and we sat in for three days, and the Mayor formed a Human Relations Committee, and they solved the problem. There was no violence. We just sat there, at least our members didn't give them violence. We had a few people who were --

Q I mean I want to ask you about pursuing what you call the normal -- well, I have heard it explained by witness Ronnie Moore that they protested in indignation to racial discrimination and segregation, and each time when you come to these cities, and you put on such a protest, isn't there oftentimes violence from say the white group on your groups that do that?

A Sometimes the people become violent.

Q Hasn't it been your experience that more times than not that they have become violent, like in the freedom rides?

A More times than not?

Q More times than not, yes.

A No, I would say no. When you say "violence," you mean physical violence?

Q Yes, I mean white people getting all upset and wanting to fight the colored people, and trying to turn over buses and tear up colored people's property --

A I suspect all die-hard segregationists have this feeling.

Q You have seen that happen, though, haven't you?

A You mean have I seen physical violence?

Q Yes.

A The only physical violence I have seen is when I was beaten with snowballs.

Q Like when you brought all of them from the Capitol over to St. Louis Street, I have heard it said that you all were protesting. What is the end result of protesting? I mean what did you hope to gain by protesting is what I want to know. Is that the method you choose of letting the people in Baton Rouge know you don't like the arrest of picketers, you know, that they had down on Third Street the day before? Is that your way of letting everybody know you don't like that or are aggrieved by that?

A No, you might say this is only one method, Your Honor. We were protesting racial discrimination in the twelve stores, and the arrest of these students was just an aftermath, a footnote. We always keep these things orderly, and just like I asked Captain Henderson and talked with the officers about keeping this thing orderly, and then we are quite concerned in our protest that these things remain orderly. No one can say that we have ever been disorderly.

Q Have you ever been a part of a demonstration which has been estimated to be some fifteen hundred people marching down around a Courthouse in a business area, all being the same race?

A Yes, five hundred high school students made a tour through downtown High Point, North Carolina, one year.

Q When you do that, don't you think that it is calculated to cause some trouble between the races or have a flareup of violence one against the other?

A There is a possibility, Your Honor, but we try to train all of our people in nonviolence before anyone goes on a project. There is always a speech on nonviolence and love and Christian ethics.

Q I know that, but can you always control that?

A Never, Your Honor, just like people accuse me of being a Communist. I'm not a Communist. They say CORE is Communist infiltrated. That is no more true than I can say that all policemen are homosexuals. You just can't determine these things. You don't know whether a man is going to perpetrate violence. I don't know when I walk out that door I am going to be hit by one of the officers.

Q Don't you know that when you get fifteen hundred people together, at least, that there is a great likelihood for that to happen?

A Just like, Your Honor, there is a likelihood when I drive down the highway that I may not ever get back home. You never know. I am not trying to get killed, and this is why we train people. That is why the clinic here. That is why this program was held.

Q This is entirely -- I am very concerned for the colored people in this community and also for the white people.

A I believe that.

Q Public officials like myself, we worry about having trouble between the races. That Sheriff that you see behind you, he worries about it. That Chief of Police, he worries about that. I know that personally, and I just want to know can you understand that when we get that many colored people coming down in the center of Baton Rouge that that might cause some sort of racial violence, especially when we are all of the same color? Don't you think that is calculated to cause some sort of a disturbance?

A No, Your Honor, if I may -- you will give me thirty seconds here --

Q I will.

A This is America, the land of the free and home of the brave. This is a Christian nation, and the Constitution is based on the Bible and Christian ethics of love. All men are supposed to be brothers. Why should my brother regardless of his race, Jew or Gentile, rich or poor, black or white, saint or sinner, why should he perpetrate violence on me? I wouldn't want a white man to perpetrate any more violence on me than I would want a Negro man to catch another white man in his neighborhood and do it to him.

Q I was just thinking of a parallel situation. Suppose we had a white man or some white person march fifteen hundred people down East Boulevard and stand up against all the places of business there carrying anti-integration signs or let's march them all down on Swan Street fifteen hundred strong and block the sidewalk and sing "America" and put out signs, you know, saying that we are in favor of segregation and such catch-all phrases that they could probably invent, which is directly and diametrically opposed to what -- to their feelings on the matter and have them all come down in there and do that. Do you think that is calculated to be peaceful?

A Well, it depends upon the purpose for it.

Q That's what I am saying the purpose.

A I have known white people to parade through Negro neighborhoods. They picket the NAACP office in New Orleans. They picket our CORE church meetings in Shreveport. They blow up the churches during our banquets. We don't fight them. We don't fight them.

Q Well, you know this Court as far as I know I think all of us are interested in freedom of speech. In other words, I don't quarrel with people who are being segregated from griping about it, so to speak. That doesn't bother me at all that they want to let people know that they don't like segregation. That suits me fine, but it reminds me of just like picketing, you know. They say picketing is freedom of speech. Our laws don't let them picket fifteen hundred strong because there are laws designed against mass picketing.

A That's right.

Q Because mass picketing really and truly in essence causes violence or it is conducive to causing violence, and I just wonder if you don't think in your experience that that might be the same situation when you have fifteen hundred colored people come down here and altogether. Is that not conducive to a violent situation?

A No, Your Honor, because we as members of CORE, we don't perpetrate violence. We try to avoid it.

Q I know you say that, but --

A And, Your Honor, it hasn't ever been proven that a CORE member has ever been guilty of violence.

Q You heard some of the public officials here today say that -- they used the word "explosive."

A Explosive, yes.

Q You have been in our town a little while, haven't you?

A Yes, in and out.

Q And you have also taken cognizance of things that have happened out there at Southern University since this demonstration and since the arrest of these other students?

A That's right.

Q And would you even then before have called the situation "explosive"?

A Well, I am not sure --

Q How about racial tension? Do you think that even before this demonstration -- I mean we have asked them their opinion and now I want to ask you. I think that's fair. Before this demonstration occurred down here on St. Louis Street, don't you think that there was racial tension in this town?

A I think there is racial tension everywhere, Your Honor, where there is racial segregation and discrimination. Just like there must be tension on jobs where people have been there for a long time and they haven't gotten a raise and somebody else has gotten a raise who has been there a short period of time. I think there is tension. I am sure some of these deputies in here are jealous because some of their colleagues have been raised up as captains or sergeants and they have been on there longer. They wonder why. There is a little tension. Tension is in our community living. If you were black, you would understand what I mean about racial tension, but we don't exert it. Now, I have heard the District Attorney say that peace and tranquility -- what he means I suppose is that when Negroes don't stand up for their Constitutional rights, there is peace and tranquility. When Negroes cow-tail and use the old Uncle Tom antics or "yas, sur," and when they drink out of colored fountains and have to go downstairs in the basement to use the restroom and hold up court processions as our attorney did today, then they are satisfied. All we want is just what everybody else wants and no more.

Q And then are you in agreement, then, that one of the ways to get it by your organization of which you are a member or Secretary of is to do that by having mass demonstrations?

A This is only one of our avenues, Your Honor, just like it is in a Christian church. You protest against sin by love. Now, there is not a person in this town today --

Q I understand that. Like to go in a place where you know you are not wanted, you absolutely know that before you go there or you know like those lunch counters. You know that they refuse to serve you, you know that, don't you?

A That's right.

Q To go to a place where they have refused to serve you or for another example, to go to a church where you know that there are no members of the colored race and have them go in it, don't you know that or do you think that is calculated to cause any love?

A No, but I think this, Your Honor, if a Negro who happens to be a Methodist belongs to a so-called "Negro Methodist Church" and supports all the institutions of that denomination and supports the missionaries around the world, I think that he ought to be able to go into any Methodist Church whether the composition of that membership is all lily white or all black.

Q Suppose they don't want you? Does that make a difference?

A Well, if they don't want you, then they ought to take the welcome sign down from the bulletin boards and say, "welcome, white only," or "welcome, Jewish only."

Q I know but maybe they might ought to do that, but if they don't want you, just what do you think? Do you think that makes somebody love you if they don't want you to push yourself on them?

A Well, it is not pushing, Your Honor --

Q It would be if you came to my house and I didn't want you and you just came in against my wishes.

A Oh, now, in that sense --

Q Say in my church, say we are all in the same church together and we don't want to have any colored members and they come anyhow --

A Well, I think they ought to try to accept the colored sects in there but if you don't want any coloreds in there, then I think we ought to get us another God.

Q I will agree with you, let's do that, but I am talking about is that calculated to make all of those people accept you if you come and do that?

A No, you can't make anybody accept you, Your Honor, just like the Supreme Court of this country can't make a white man love a Negro, but the law of the land is supposed to protect the Negro from persons of any race who may perpetrate violence.

Q You thought up the matter that you thought you could accomplish that by love, didn't you?

A Yes.

Q And I am just asking you whether or not those things are calculated to engender any love between the races?

A Yes, sir, Your Honor, when a white man from Chillingswitch, Georgia, is inducted into the Army and sent to Korea to fight beside a Negro, he may not want to be by this Negro, but he is fighting for the same cause, the freedom of his country and protection. By throwing them together, they learn each other. They learn that they have the same headaches and heartaches and the same marital problems and love life and by throwing them together, it only backs up the song you and I learned in kindergarten, "The More We Get Together, the Happier We Will Be." As long as there is racial discrimination and segregation --

Q You think that will cause a better understanding between the races?

A The more you and I, Your Honor, associate together, the better I may understand you and the better you understand me, but as long as there is an invisible wall between us, we won't understand one another.

Q Well, of course, you realize that what I have been asking you is really beside the point with regard to the trial, but I was very interested to know since you are the Field Secretary and you did have a part in this demonstration, how that was calculated to -- what effect that was supposed to have.

A The protest of racial discrimination and segregation in the parish --

Q That is an important point on which you are charged with under one of the bills.

THE COURT: All right.

MR. PITCHER: I have a couple of questions.

BY MR. PITCHER:

Q You say that when you talked to Chief of Police White and Mr. Font and these other officers in the middle of the street and they asked you with regard to the time the demonstration would take and you told them, I believe the singing would take approximately three minutes and your speech would take approximately seven minutes and the entire program would take approximately seventeen to eighteen, nineteen minutes, is that right?

A No, I said seventeen to twenty or twenty-five. I know I used the word "twenty." Now, whether it was twenty per se or I extended it to the other four minutes, I am not sure.

Q Well, you did tell them that you knew your speech would take seven minutes?

A About seven minutes.

Q About seven minutes. Now, I want to ask you this, Reverend. If you were not the leader of that crowd, how did you know that your speech would only take seven minutes?

A Because I had made up my mind that if I was going to carry out this thing as it was printed on the program it had to be short, because I had no prepared speech as such.

Q Well, then, your speech -- did it take seven minutes?

A I am not sure. I didn't clock it. -- I don't have a stop watch, and I don't think anyone had a tape recorder there recording it.

Q How is the Congress of Racial Equality financed?

A By contributions from members and from foundations and from other organizations.

Q Now, you say foundations. What foundations particularly?

MR. JONES: I object, Your Honor. It has nothing to do with this trial.

THE COURT: Sustained.

Q Do you know a man by the name of Leroy Clark?

A Leroy Clark?

MR. JONES: I object --

THE COURT: Sustained.

MR. PITCHER: Judge, I am sorry, sir, but I have got to ask this question.

THE COURT: Well, what connection does it have?

MR. PITCHER: In the first place, this man has had his turn to make his speech. Now, I have got him under cross-examination, and I am going to test his credibility, and I have a specific purpose in mind for asking this question, because I am going to impeach his testimony, Judge.

A Your Honor, I don't mind answering any question he has.

THE COURT: All right.

Q Do you know Leroy --

MR. JONES: I am going to still object because --

THE COURT: You are entitled to object for the record, and --

MR. JONES: He can get

anything in the record he wishes by saying, "I am going to impeach his testimony."

THE COURT: Isn't that right, counsel? I have let everything in, haven't I?

MR. JONES: That is just about right.

Q Do you know Leroy Clark?

A Are you talking about a Mr. Leroy Clark who is a labor man?

Q I don't know whether he is a labor man or not, but he lives in High Point, North Carolina.

A No, I don't know Leroy Clark who is presently living in North Carolina. I know a Leroy Clark who used to live there.

Q Did you ever live with him in High Point, North Carolina?

A Yes.

Q You did?

A He lived a block and a half from me.

Q Do you know what position, if any, he holds with the Communist party in the State of New York?

A Indeed not.

Q Do you know whether or not he is Secretary of that party?

A Indeed not.

Q You do not know that?

MR. PITCHER: That's all. Thank you.

THE COURT: All right. Do you have any more questions?

MR. JONES: We rest, Your Honor.

WITNESS EXCUSED

. . . .

TESTIMONY CLOSED

. . . .

(At this time the case was argued by counsel for the State and counsel for the defendant, and the case was submitted to the Court.)

REASONS FOR JUDGMENT

BY THE COURT:

Before rendering a verdict, I want to caution the members present in court that I expect complete orderliness to be carried out just as it has been while arguments of counsel were going on and just like it has been throughout this entire trial.

First of all, the Court would like to thank both counsel for their respect to the Court and toward each other. The Court takes cognizance of the fact that during a heated trial sometimes both witnesses and counsel and the Court have heated exchanges, and I think that in a case of the character of this case involving demonstrators or rather the leader of a demonstration protesting segregation in this community, it is particularly admirable. It is admirable because, as counsel pointed out in argument, we have lived here peacefully in this community under a system of segregation from time immemorial and then all of a sudden in one day we have a protest of 1,500 people strong in the City of Baton Rouge and against what has been a custom for so long.

I want to dictate into the record exactly all of my reasons for judgment because much of the evidence adduced by both the prosecution and by the defense was based on hearsay, but I, as the judge of this court, am able to discriminate as to what is hearsay and what is not hearsay and what, in my opinion, is valid evidence.

With regard to the charge in 42,199, the Court finds B. Elton Cox not guilty. (I promise you, if I hear any further demonstration, I will empty the courtroom.) I find B. Elton Cox not guilty because he is charged under our attempt statute which is 14:26, and I cannot find him guilty of this charge because it is my opinion that the law of this state is that there must be some overt act perpetrated in violation of the statute which he is charged with, namely, 14:100.1 and 14:100.3, and the only evidence to prove this was that the defendant told the demonstrators to go down to the lunch counter and stay there. Our law, however, I think is that there must have been some overt act on the part of those with whom he was in conspiracy to violate that law, and I think probably had it not been for the police breaking up the demonstration that he would have been found guilty of this charge. I do think that the police broke it up before any one of them could make one move in that direction.

Now, with regard to the charge that is contained in bill No. 42,200. In bill No. 42,200 he is charged:

> ". . . in that he did wilfully obstruct the free, convenient and normal use of a public sidewalk within the City of Baton Rouge thereby impeding, hindering and restraining passage thereon."

This Court takes cognizance of the fact that there has been testimony of competent witnesses from our police force who have had experience in estimating crowds; I have seen the pictures taken by Mr. Bob Durham which reflect to me that the sidewalk was effectively blocked. To place some 1,500 people -- The evidence was that the people did not block the service station area which is shown on a map of E. R. Nilson Map Service, but the testimony of both the police and disinterested witnesses not in anywise connected with law enforcement as well as the photographs taken by the photographer in the news film show that in the area ten feet wide according to this map and some 256 feet long that there were contained by the minimum estimate some 1,500 people; and if 1,500 people can congregate in 256 feet without blocking it, then the Court would have to be blind to physical facts. So, for that reason, as a consequence of what I saw on the film and from what I heard, I say and hold that this sidewalk on the west side of the Courthouse was obstructed for the convenient and normal use as a public sidewalk in the City of Baton Rouge and that it did impede and hinder and restrain passage thereon in the direct words of the statute that this bill of information which I read from tracks the statute. I find the defendant guilty of that charge.

With regard to No. 42,202 wherein he is charged with violating R. S. 14:103.1, R. S. 14:103.1 says that:

> "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of peace may be occasioned thereby: (1) crowds or congregates with others . . . upon a public sidewalk, (and, of course, I have omitted the parts of the statute which are not pertinent) or any other public place or building (which is what he is charged with in the bill of information) . . . and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the State of Louisiana . . ."

commits the crime of disturbing the peace. With regard to this statute, an attack has been made on this statute on the grounds that it is unconstitutional because it seeks to prohibit or punish the defendant by virtue of a criminal statute when he has a right as a citizen to peacefully protest against the segregation laws of the State of Louisiana or to protest against racial segregation and discrimination.

First of all, let me say that this Court respects the right of freedom of speech. It respects the right to picket, but even the right to picket and the right of freedom of speech is subject to limitation. Restrictions have been placed on the right to picket by the Federal Government and elsewhere under our state law involving labor activities with regard to their right to picket. In any event, picketing is said to be lawful when it is peaceful because it represents freedom of speech. Now, the right to protest is lawful, and the right to protest is lawful if it is conducted in a lawful manner. Our courts have held that picketing is unlawful when it is mass picketing, and if this protesting is a form of freedom of speech, I say it is unlawful when it is done en masse by some 1,500 people of the colored race parading on the streets of Baton Rouge and congregating on the sidewalk in violation of this statute.

If this statute is a "segregation statute," it should be one of the segregation statutes that should be upheld by every court in this land. It should be upheld because it undertakes to understand the mood and the nature of our people, both colored and white. It recognizes, as this Court recognizes, that in the City of Baton Rouge there is racial tension. It recognizes, as our legislators must have recognized, that there is racial tension within the State of Louisiana; and the intent of the statute is to give the police the power to punish or disband or break up mass demonstrations, especially where they might involve racial overtones. It doesn't take a smart judge or it doesn't take any evidence to be presented to this Court to know that since the advent or since the decision of the United States Supreme Court (I think the case was Brown v. Topeka), that racial tension has mounted in the south, and understandably so, because after living under that system for hundreds and hundreds of years the change didn't just occur overnight. They recognize the basic human instinct that there would be resentment toward integration in the South, and I think our Legislature wisely took steps to have a statute on the books that would give law enforcement authorities the power to make it unlawful for anyone to demonstrate in such a manner so as to effectively block the sidewalk, which was done in this case. It should be inherently dangerous and a breach of the peace, recognizing racial tension as we have it in the south. It must be recognized to be inherently dangerous and a breach of the peace to bring 1,500 people, colored people, down in the predominantly white business district in the City of Baton Rouge and congregate across the street from the Courthouse and sing songs as described to me by the defendant as the CORE national anthem carrying lines such as "black and white together" and to urge those 1,500 people to descend upon our lunch counters and sit there until they are served. That has to be an inherent breach of the peace, and our statute 14:103.1 has made it so.

With regard to bill No. 42,201, that is where B. Elton Cox is charged that he:

> ". . . unlawfully violated the provisions of R. S. 14:401, in that he, with the intent of interfering with, obstructing, and impeding the administration of Justice, and with the intent of influencing a Judge, witnesses and Court Officers in the discharge of their duty, did picket, parade and engage in a demonstration in front of and near the East Baton Rouge Parish Courthouse, a building housing a Court of the State of Louisiana and occupied and used by such Judges, witnesses and Court Officers."

Mr. Jones has filed into the record this map which shows that the group which Reverend Cox led to the west side of America Street could not have been more than 103 feet from the steps of the courthouse to where his group was congregated directly across the street. That would be 103 feet and the Court feels that that would qualify under the definition of being near. With regard to the evidence as to whether or not he was the leader of the said group, he was the one who dealt with the officers, he is the Field Secretary of the Congress of Racial Equality and the evidence, not only from his own testimony but from Ronnie Moore and others of his affiliation with CORE, leaves no doubt in this Court's mind that he was the leader of the group across the street from the Courthouse. That is also accurately reflected in the films. The real question, though, in that statute is with regard to the intent. The bill charges ". . . in that he, with the intent of interfering with, obstructing, and impeding the administration of Justice, and with the intent of influencing a Judge . . . ." I asked many questions of the accused and others such as Ronnie Moore as to just what did they propose to accomplish by congregating on the other side of the Courthouse, on the street on the other side of the Courthouse, singing these songs and protesting the "illegal incarceration" of their fellow members in the East Baton Rouge Parish jail.

The defense is that they had no intent to influence anyone, that this is just mere freedom of speech, that this is their right to protest out against anything which they happen to think is a social wrong and a social injustice. Of course, even our Federal Government has recognized the danger of freedom of speech expressed in this manner and has made it a violation of Federal law to picket and parade and engage in a demonstration in front of or around a Federal Court. Our state statute, which was copied after the Federal statute, was enacted even before the Supreme Court issued its initial school integration decision. This statute was on our books in the year 1950, long before the school integration decision, and was copied after the Federal statute.

Now, what do people do when they come and parade in front of the Courthouse? I was not a witness to the demonstration myself personally, but I was present in the Courthouse shortly before it occurred. I was present in this Courthouse when evidently the police had gotten notice that some demonstration was impending, and my reaction was to get away from it as fast as I could. If you asked me what I was afraid of, I can tell you best by saying that having lived here in the South all of my life and being present around a demonstration of some 1,500 colored people who are protesting against racial discrimination and being a part of this community and living in this community where I know that especially of late that there is tension between the races, I felt that it would be unpleasant in some way or it would be some unpleasant thing to me to see; and because I know that there is tension between the races, I think I felt apprehensive that trouble or violence could erupt from such a situation. That is what I felt in my heart and that is why I left, because I didn't want to be anywhere near or in connection with it. I can say that it had influence on me. I can say that it made me fearful. Perhaps a better word would be "apprehensive," that there might be some racial violence. I can say as a judge that that is the way I felt. With all my heart I can say that. Then when I try to think of, if you want to protest, why protest around the Courthouse, I get the feeling that there is some subtle intimidation of me or of anyone of us who is responsible for upholding the laws of the State of Louisiana and maintaining, according to certain of our laws, segregation.

For example, Mr. Jones, who has practiced law in my court for some time with success, sometimes without, well knows that Division "B" and every other division up here has been segregated. He well knows that, and I think he also knows, too, that if I would just say to everybody white and colored, "Let's just all mix up together in the courtroom at the same time," I think that it would be calculated to cause disorder in court. Maybe some time that situation might not be, but he ought to know and I do know right now that it would cause disorder. When he makes such a statement in the presence of a courtroom almost entirely filled with colored persons and knowing the situation as he does, I think this is some intimidation of me. The Court gave half the section that was usually reserved for whites to the colored spectators in addition to the half that they have always customarily had, and he intimates that the Court is being unfair by allowing this trial to go on in a segregated courtroom. Yes, I feel that there is some intimidation of me, especially when there are some 250 colored people standing in the halls outside waiting to get in and overcrowd this courtroom when there is no place for them to sit if I gave them the whole courtroom.

In any event, I felt as a judge the subtle intimidation, and while I know that he protests bitterly against it as merely a freedom of his speech, I am sure when our Federal Government devised this statute which our state has copied that perhaps the Communists must have felt the same way.

Therefore, the Court finds the defendant B. Elton Cox quilty of bill No. 42,201.

Now, with regard to the sentencing of the defendant --

MR. JONES: Your Honor, before you go into the sentencing and at this point, I wish to object and except to the verdict of this Court and ask that a formal bill be reserved, and I would like for all the exceptions, motions, applications for bills of particulars and all the rulings of this Court be renewed and made a part of the record, and I also want to give notice to this Court and to the District Attorney that the defendant intends and will apply to the Supreme Court of the State of Louisiana on writs of certiorari, mandamus and prohibition.

MR. PITCHER: If Your Honor Please, that notice comes a little early, as you haven't passed sentence yet.

MR. JONES: All right, I will give it again.

BY THE COURT:

No. 42,200 is the violation of R. S. 14:100.1 ". . . in that he did wilfully obstruct the free, convenient and normal use of a public sidewalk . . . hindering and restraining passage thereon." R. S. 14:100.1 says:

> "Whoever violates the provision of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both fined and imprisoned."

No. 42,201 is a violation of R. S. 14:401. That is where he is charged with ". . . interfering with, obstructing and impeding the administration of Justice, and with the intent of influencing a Judge . . ." and so forth. The penalty provision of this is that he shall be fined not more than $5,000 and imprisoned for not more than one year or both.

No. 42,202 is a violation of R. S. 14:103.1. That is $200. It says:

"Whoever commits the crime of disturbing the peace as defined herein shall be punished by a fine of not more than two hundred dollars, or imprisonment in the parish jail for not more than four months, or by both . . . ."

In 42,200 the Court sentences the defendant to pay a fine of $500 and to be confined in the East Baton Rouge Parish jail for a period of five months and in failure to pay the fine imposed by the Court, an additional five months.

In regard to 42,201, which is the one where the pickets were parading around the Courthouse, the Court sentences the defendant to pay a fine of $5,000 and to be confined in the East Baton Rouge Parish jail for a period of one year and in the event of nonpayment of the fine, one year additional.

In regard to 42,202 the Court sentences the defendant to pay a fine of $200 and to be confined in the East Baton Rouge Parish jail for a period of four months and in default of the payment of the fine to be confined in the East Baton Rouge Parish jail for a period of four months.

MR. PITCHER: How are the sentences to run?

THE COURT: Each sentence is to run consecutively with the others.

MR. JONES: To the verdict and sentence of this Court I would like to except and ask that a formal bill be reserved and ask that all motions, all pleadings, all exceptions be renewed and made a part of the record. I would also like to give formal notice to this Court and to the office of the District Attorney of the Parish of East Baton Rouge, State of Louisiana, of the defendant's intention to apply and will to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition on bills No. 42,200, 42,201 and 42,202.

THE COURT: Is that all counsel?

MR. PITCHER: If Your Honor Please, may I make one suggestion to the Court? In view of Your Honor's sentence in 42,201, the sentence imposed was $5,000 and one year. There is no right for a writ of certiorari in that case. There is a right of appeal only, and I ask counsel if he serves notice to ask for an order of appeal at this time?

MR. JONES: I also serve notice for an order of appeal.

MR. PITCHER: Are you asking for an order of appeal now?

MR. JONES: Yes, sir, we are asking for an order of appeal now.

THE COURT: All right. You asked for an order of appeal?

MR. JONES: Yes, sir.

THE COURT: Well, I think it becomes incumbent on the Court then to set the appeal bond.

MR. JONES: Yes, sir.

THE COURT: I set it equal to the fine.

MR. PITCHER: If Your Honor Please, he has no right of appeal now in the cases in which he has applied for certiorari. There is no appeal in a case where the fine is less than $300.

THE COURT: He has a right to appeal for the one he just asked about --

MR. PITCHER: The point I am making, If Your Honor Please, he has a mandatory right of appeal in any sentence where the fine imposed is more than, I think it is $300 or the imprisonment is more than six months. On two of these cases -- in other words, where he has the right of appeal, the remedy is only by appeal, and he has asked Your Honor to enter an order of appeal in that case and I acquiesced that Your Honor should grant that order of appeal and make it returnable on whatever day Your Honor sees fit. The other notice that he is going to serve on me comes a little later. He has got to prepare his motion for certiorari. In the meantime the defendant has to go to jail.

THE COURT: Well, what do you want me to do?

MR. PITCHER: I want you to grant the order of appeal he has asked for.

MR. JONES: Your Honor, he can be released on his present bond as long as the sentence is less than five years.

MR. PITCHER: Oh, no.

THE COURT: Where do you find that? When I sentence people, I didn't know they could just get out of jail by appealing.

MR. JONES: Yes, sir, he can appeal if the sentence is less than five years.

THE COURT: Where is that, counsel?

MR. PITCHER: Here it is, Judge. Now, the Constitution of the State of Louisiana, Article 7, Section 10, provides that the Supreme Court shall have jurisdiction in all civil cases where the sentence imposed is more than $500 or six months in jail. That is where the Supreme Court has exclusive jurisdiction.

THE COURT: What does it say again?

MR. PITCHER: I think the amount is $500 and six months in jail. Now, on bail pending appeal in misdemeanor cases (reading): "Whenever an accused shall take an appeal in a misdemeanor case -- shall have taken an appeal in a misdemeanor case, he has no right of appeal in a misdemeanor case where your fine is less than $500 and your imprisonment is less than six months." Now, you have that situation --

THE COURT: Well, that's right --

MR. PITCHER: They don't have any appeal, so they are not entitled to bond.

MR. JONES: They are entitled to bond if the sentence is less than five years.

MR. PITCHER: Where do you find that, Johnnie? I don't know where that law is.

MR. BELL: Your Honor --

THE COURT: Well, until you find me something on it, he will just have to go to jail. If you show it to me, I will turn him out.

MR. PITCHER: Before you adjourn court, will you grant that order of appeal he asked for returnable on a fixed date to the Supreme Court?

MR. JONES: I want to take a ruling, Your Honor, right here that you are presently making that he will have to go to jail. I except to that, too, Your Honor, and ask that a bill be reserved.

THE COURT: With regard to the time limit, what is the time limit on that, sixty days?

MR. PITCHER: Thirty to sixty days.

THE COURT: All right then I will make it -- do you want it as fast as possible?

MR. JONES: Give me a little time, Your Honor.

THE COURT: Well, see she has got to do a lot of typing.

MR. JONES: Yes, I know that, sir.

THE COURT: All right then, I will make it returnable on the 30th day of March, 1962.

MR. PITCHER: That's your order of appeal. Thank you, sir.

TRIAL CONCLUDED

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Mss
546 SEDFRE

Louisiana vs. B. Elton Cox May, 1962 - 1965

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Court Convenes
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SUPREME COURT OF LOUISIANA

NEW ORLEANS

NOTICE
Telegrams Will Be Sent
Only in Event Cases
Will Not Be Reached.

In filing briefs Sections 2 and 3 of Rule IX of this Court must be strictly adhered to.

Section 2. The brief for the appellant, applicant or relator, as the case may be, shall set forth (1) an index of the authorities cited; (2) a statement of the jurisdiction of this court as applied to the case; (3) a succinct syllabus or statement of the principles of law relied upon, with a citation of the authority for each proposition; (4) a concise statement of the case; (5) a specification of the alleged errors complained of; (6) an argument confined strictly to the issue or issues of the case free from unnecessary repetition and with accurate citation of the pages of the transcript and of the law books cited, giving the title of any decided case cited as well as the book in which it is published and page thereof. When a decision of this court is cited, the citation of the book and page number of the Louisiana Reports shall be given as well as that of the Southern Reporter.

Section 3. The brief for the appellee, or respondent, as the case may be, shall be an appropriate and a concise answer to the complaint or complaints and arguments of the appellant, applicant or relator, as the case may be, with accurate citation of the pages of the transcript and of the law books referred to; provided that, if the appellant, applicant or relator, as the case may be, has not filed a brief, the brief of the appellee, or respondent, shall contain a complete but concise statement of the case, and such argument as may be deemed necessary.

The Supreme Court has issued an order effective as of March 1, 1954, that no brief will be accepted for filing unless filed within the time prescribed by the rules, i.e., the Appellant's brief must be filed fourteen (14) days before the date set for argument. The Appellee's brief must be filed three (3) days before date set for argument. The only exception to this rule is where an Attorney obtains a written order from the Supreme Court allowing him to file his brief late. Application for such permission must be made to the Supreme Court and must contain compelling reasons justifying such late filing.

Monday, January 14, 1963

46,258	Louis J. Guillory v. New Amsterdam Casualty Co., et al. On writ of review to the Court of Appeal, Fourth Circuit	Jesse S. Guillot; James E. Glancey, Jr., Stanley E. Loeb.
46,321	Mrs. Frances Phelps, Individually and as Administratrix of the Estate of the Minor, Meade Phelps, v. Dr. K. V. Donaldson. On writ of review to the Court of Appeal, Third Circuit	Watson, Williams & Brittain; Stafford & Pitts.
45,748	Louisiana State Bar Association v. Arthur B. Haack	John Pat. Little, Bascom D. Talley, Jr., Oliver P. Stockwell, Pat W. Browne, Sr., A. K. Goff, Jr.; W. P. Macmurdo.

Tuesday, January 15, 1963

46,299	Mrs. Corinne Clohecy Wise, Widow of Daniel J. Wise, v. Vesper Prescott, et al. On writ of review to the Court of Appeal, Fourth Circuit	Alvin R. Christovich, William W. Ogden; John P. Dowling, Calvin H. McBride, Curtis R. Boisfontaine, Sessions, Fishman, Rosenson & Snellings.
46,309	Mrs. Corinne Clohecy Wise, Widow of Daniel J. Wise, v. Vesper Prescott, et al. On writ of review to the Court of Appeal, Fourth Circuit	John P. Dowling, Calvin H. McBride; Curtis R. Boisfontaine, Sessions, Fishman, Rosenson & Snellings, Alvin R. Christovich, William W. Ogden.
46,301	State of Louisiana, Through the Department of Highways, v. Helene Reuss Hayward. On writ of review to the Court of Appeal, First Circuit	D. Ross Banister, Glenn S. Darsey, Ben C. Norgress, Brunswig Sholars; Blum & Sotile, Joseph A. Loret.
46,278	In the matter of the Succession of Stokes Seals. On writ of review to the Court of Appeal, Second Circuit	Robinson & Atkins; Charles H. Morton, Jackson & Reynolds.

Wednesday, January 16, 1963

46,313	Columbia Finance Corp. v. Fred Robitcheck, et al. On writ of review to the Court of Appeal, Fourth Circuit	Drury, Lozes & Dodge; Wilson F. Shoughrue, Jr.
46,322	W. B. Wright, et al., v. Anthony P. DeFatta, et al. On writ of review to the Court of Appeal, Second Circuit. Writ granted. Review limited to question presented by relator's assignment of Error No. 5 of whether neighboring property owners are entitled to injunctive relief without a showing of specific damage	Ferdinand A. Cashio; Charles M. Peters, Roy B. Tuck, Jr., Hugh T. Ward, J. N. Marcantel, J. Bennett Johnston, Jr.
46,323	Succession of Eva Marie Troxler Browne. On writ of review to the Court of Appeal, Second Circuit. Writ granted but limited to a consideration of the question of whether applicants are entitled to a hearing respecting the alleged unfitness of the testamentary executor	Smallenberger, Eatman & Tooke; Morgan, Baker, Skeels, Middleton & Coleman, Sam V. Prunty, Jr.

(CONTINUED ON SHEET TWO)

NOTICE
Court Convenes
at 11:00 A. M.

OFFICIAL DOCKET

SUPREME COURT OF LOUISIANA

NEW ORLEANS

NOTICE
Telegrams Will Be Se
Only in Event Cas
Will Not Be Reache

(CONTINUED FROM SHEET ONE)

Thursday, January 17, 1963

46,341	Stuart S. Kay v. Harold D. Carter and Charles P. Kelley and Anna M. Kelley. On writ of review to the Court of Appeal, Third Circuit	William C. Pegues, III, E. M. Nichols; Stuart S. Kay Jones & Jones, Joe J. Tritico.
46,326	Errol Naquin v. Marquette Casualty Co. and Town of Breaux Bridge, Louisiana. On writ of review to the Court of Appeal, Third Circuit	Willis & Willis; Lawrence Simon, Davidson, Meaux, Onebane & Donohoe.
46,327	St. Paul Fire & Marine Insurance Co. v. Town of Breaux Bridge, Louisiana and Marquette Casualty Co. On writ of review to the Court of Appeal, Third Circuit	Pugh & Boudreaux; Richard C. Meaux, Mouton, Champagne & Colomb, Helm, Simon, Caffery & Duhe.
46,334	Rodney Fontenot v. Wabash Life Insurance Co. On writ of review to the Court of Appeal, Third Circuit. Writ granted, limited to the question of assessment of penalties and attorneys' fees	Fusilier, Pucheu & Soileau; Preston N. Aucoin.

Friday, January 18, 1963

46,396	State of Louisiana v. B. Elton Cox. On writs of certiorari, mandamus and prohibition. Writs granted with stay order	Robert F. Collins, Nils R. Douglas, Lolis E. Elie, Murphy W. Bell, Carl Rachlin; Jack P. F. Gremillion, Attorney General, M. E. Culligan, Asst. Attorney General, Sargent Pitcher, Jr., District Attorney.
46,329	State of Louisiana v. Oscar Milton Tedeton, Alias Buddy Tedeton	Jack P. F. Gremillion, Attorney General, M. E. Culligan, Assistant Attorney General, Albin P. Lassiter, District Attorney, Gilbert T. Brown, Jr., Asst. District Attorney; Dhu & Lea S. Thompson.
46,337	State of Louisiana v. Bobby Milton McAllister	Jack P. F. Gremillion, Attorney General, M. E. Culligan, Asst. Attorney General, Duncan S. Kemp, District Attorney, Leonard E. Yokum, Asst. District Attorney; E. B. Dufreche, Gordon E. Causey.

Posted Monday, November 26, 1962

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New Orleans 16, La.

SUPREME COURT OF LOUISIANA

NO. 46,395

STATE OF LOUISIANA
Plaintiff-Respondent

versus

B.ELTON COX
Defendant-Appellant

APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE, HONORABLE FRED A. BLANCHE, JR. JUDGE.

PETITION FOR REHEARING

ON BEHALF OF B. ELTON COX
Defendant - Appellant

* * * * * * *

NO. 46,396

STATE OF LOUISIANA
Plaintiff-Respondent.

versus

B. ELTON COX
Defendant -Relator

IN RE: B. ELTON COX APPLYING FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION TO THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA.

PETITION FOR REHEARING
ON BEHALF OF B. ELTON COX

DEFENDANT - RELATOR

* * *

SUPREME COURT OF LOUISIANA

NO. 46,395

STATE OF LOUISIANA

versus

B. ELTON COX

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE, HONORABLE FRED A. BLANCHE JR., JUDGE

PETITION FOR REHEARING
ON BEHALF OF B. ELTON COX DEFENDANT - APPELLANT.

STATE OF LOUISIANA

NO. 46,396

STATE OF LOUISIANA

versus

B. ELTON COX

IN RE: B. ELTON COX APPLYING FOR WRITS OF CERTIORARI, MANDAMUS, AND PROHIBITION TO THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

PETITION FOR REHEARING
ON BEHALF OF B. ELTON COX, DEFENDANT RELATOR

The petition of B. ELTON COX with respect represents that the opinion of this Honorable Court rendered on the 28th day of June 1963 is prejudicial to the interest of defendant-relator - appellant, and is contrary to the law and evidence and a rehearing should be granted herein for the following reasons, to-wit:

1.

That this Honorable Court erred in ruling that the Bills of Information in both cases were sufficient to apprise the accused of the nature and the cause of the accusation against him. The ruling of this Honorable Court is in conflict with the recent decision of State v. Smith 243 La. 656, 146 So. (2d) 152 handed down on November 5, 1962. See also dissent of Mr. Justice Mc Caleb in cases numbered 46,395 and 46,396 judgment rendered on June 28, 1963.

2.

That this Honorable Court erred in concluding that the trial judge correctly and constitutionally applied the law to the facts of both cases. Not only did the trial judge not consider the use of the clear and present danger test but instead his written judgment shows the test he did apply was an unconstitutional test. In the transcript of the record at page 545 Judge Blanche says in essence that it is inherently a breach of the peace for 1,500 Negroes to demonstrate in downtown Baton Rouge, their mere presence in numbers creates a disturbance of the peace. This error is one which is patent on the face of the record and can be urged at any time.

3.

That this Honorable Court erred in concluding that there was a fair trial in spite of the fact that the trial was held before a judge without a jury; in spite of the fact that the courtroom was segregated; and in spite of the fact that the judge demonstrated his inability to render fair judgment of the facts and the law by refusing to grant the motion to Desegregate The Courtroom.

4.

That this Honorable Court erred in concluding that both statutes met the constitutional standards of completeness with reference to informing the public as to what actions would and what actions would not be considered violations of L.S.A.-R.S. 14:100.1 and L.S.A.-R.S. 14:103.1. The case of State v. Vanicor 239 La. 357, 118 So. (2d) 438 (1960) is a case, from Louisiana, which is on all fours with the proposition that L.S.A. - R.S. 14:103.1 is unconstitutionally vague. The Vanicor Case standing alone as Louisiana authority without the help of any other authority state or federal is sufficient to reverse the disturbing the peace conviction.

WHEREFORE, petitioner prays that he be permitted to file this Application for Rehearing, and that a rehearing be granted herein, and after due proceedings had that the judgment rendered herein on the 28th day of June 1963, be annulled and set aside, and that there be judgment reversing the ruling of the trial court and annuling the convictions, and discharging the defendant.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans 13, Louisiana

OF COUNSEL:

CARL RACHLIN
280 Broadway
New York, New York

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared NILS R. DOUGLAS, who, after being duly sworn deposed and said that he is one of the attorneys for the petitioner in the above and foregoing petition; that a copy thereof, has this day been mailed to Messrs. Sargent Pitcher, Jr., District Attorney, for the Parish of East Baton Rouge, M. E. Culligan, Assistant Attorney General, and Jack P. F. Gremillion, Attorney General, by depositing same in the United States mail, postage prepaid, properly addressed, and that said application for rehearing is filed in good faith, and not merely for the purpose of delay.

NILS R. DOUGLAS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _______ DAY
OF JULY, 1963.

NOTARY PUBLIC.

file

May 7, 1962

Carl Rachlin, Esq.
280 Broadway
New York, New York

Dear Carl:

Here is a resumé of what transpired in the Cox Case to date.

Case number	42-199	Criminal Conspiracy
Case number	42-200	Obstructing the sidewalk
Case number	42-201	Obstructing Justice
Case number	42-202	Disturbing the peace

The 2 felonies are numbers 42-199 and 42-201.

The trial was started on January 29th and lasted until January 31st. The defense elected to waive the jury in the 2 felony cases and the prosecution elected to try all of the cases simultaneously. B. Elton Cox was found not guilty of Criminal Conspiracy but guilty on all three of the other charges. B. Elton Cox was immediately sentenced in spite of the provision in the Code of Criminal Procedure which requires a waiting period of at least 24 hours between verdict and sentencing. B. Elton Cox was at this time remanded to jail. On February 2nd 1962, Johnny Jones filed an Application in the District Court for Habeas Corpus. This Application was filed with Judge Blanche, the judge who found Cox guilty. On February 5th the hearing on the Habeas Corpus writ was postponed by Judge Blanche. Johnny Jones at this time in open court apprised the Judge of the fact that his position was that everything which transpired in his Court including and from the sentencing of Cox was illegal and void. Johnny further indicated that he would object and reserve bills as to any ruling that the Court would take that day. On motion of the District Attorney, Johnny was given 10 days to apply for writs in the State Supreme Court. Note this District Court was erroneously under the impression that Johnny had a right to appeal only in the obstructing Justice Case wherein Cox was fined $5,000.00 and sentenced to 1 year in jail. The law provides however, that in Criminal Cases the defendant has a right to appeal in those cases where a fine of over $300.00 or imprisonment of over 6 months has been imposed.

Under normal circumstances, Cox would have his rights outlined thusly:

42-200	Obstructing the sidewalk $500 & 5 months right to appeal
42-201	Obstructing Justice $5,000 & 1 year right to appeal
42-202	Disturbing the peace $200 & 4 months only right to writs.

You will note however that writs were applied for in all 3 of the above, under the proposition that the sentence was illegal for lack of expiration of 24 hours between verdict and sentence. The State Supreme Court granted writs in 42-200 and 42-202. Our position is that writs should have been granted in all 3 cases. In 42-201 the Court denied writs on the ground that defendants rights were secured by appeal. This is not so. In the narrow situation as here where the illegality of the sentence is alleged, a proper appeal is dependant upon a proper sentence and if there is a failure of the sentence the appeal cannot stand and for a stronger reason one can't be denied relief on the ground that he can proceed by appeal. Or put another way the general rule is that if one is punished by a fine in excess of $300.00 or in excess of 6 months in jail he can appeal. The exception to this rule is that the presumption of the legality of the sentence cannot be indulged in once an allegation of invalidity is made; thus, one theoretically has neither a right to writs nor to an appeal once the validity of sentence is questioned. The defendant is only entitled to a hearing to determine whether the allegation of invalidity is true. If the allegation is true then either a New Trial can be ordered or the defendant can move for a New Trial (there is a vast distinction between these two). As here applicable, the only way we'll get a New Trial is if the Supreme Court orders it. Now, if after a hearing the Court decides the allegation is not true then writs can be denied because defendant must proceed by appeal because his sentence was beyond $300.00 and 6 months. To get back to the chronology of the case, on February 5th, Johnny informed the Court that he intended to file a Motion for a New Trial. This was overruled and Johnny reserved bills. Johnny applied for and secured bail for Cox pending 2 conditions: 1) Application for writs in the 2 cases the Court erroneously felt writs were applicable. 2) Perfection of appeal inthe obstructing justice case. Sometimes subsequent to February 5th Johnny secured 5 days extension to apply for writs. On February 21st Johnny informed the Court that he was not going to apply for writs. Cox was remanded to jail. This of course was because the last day to perfect writs to the State Supreme Court was February 20th. On this same day Johnny applied to the District Court but this time to Judge Le Blanc (note there are

2 different Judges involved Fred Le Blanc & Fred Blanche) for Habeas Corpus. On the hearing of the writ of Habeas Corpus on February 23rd some evidence was introduced and some testimony given but the Court decided to expunge the record of same and the writ of Habeas Corpus was denied, to this Johnny expepted and reserved a Bill of Exceptions. (Note: there were few if any Bills of Exceptions reserved by Johnny during the trial on the 28th, 29th, & 30th of January. The only ones related to this writer was the Bill to the ruling of the Court on the Motion to Desegregate the Court Room and to the overruling of the Motion to Quash and Application for Particulars.

We will probably call the attention of the Supreme Court to its error by a writ of error coram nobis and fight like hell to have the Supreme Court order a New Trial on the basis of errors patent on the face of the record. The errors that we intend to urge are: 1) That the minutes of the Court only show that Cox was arraigned on the disturbing of the peace charge 2) That there is no record in the minutes showing a waiver of jury trial 3) A judge other than the trial judge ruled on the Motion for a New Trial. We have our problems of course, they are: 1) The Supreme Court has in the past ex proprio motu ordered the record corrected if in fact the defects above mentioned as not being in the record actually were done but were merely not recorded and 2) The District Attorney can move to have the record corrected.

Its an uphill battle all the way, but we will make it.

Respectfully,

Nils

Nils

NRD/aem

CC: Marvin Rich

Charles Oldham

UNITED STATES OF AMERICA

STATE OF LOUISIANA

SUPREME COURT OF THE STATE OF LOUISIANA

I. V. J. COURVILLE, Clerk of the Supreme Court of the State of Louisiana, do hereby certify the documents listed below comprise a true and correct copy of the record in the case entitled State of Louisiana v. B. Elton Cox, bearing number 46,395 on the docket of this Court and number 42,200 on the docket of the Nineteenth Judicial District Court, Parish of East Baton Rouge:

1. Transcript of record of District Court
2. Envelope of exhibits
3. Brief of Defendant-Appellant
4. Brief of State-Appellee
5. Opinion of the Supreme Court of Louisiana
6. Application for rehearing
7. Petition and order of stay of execution

IN WITNESS WHEREOF, I hereunto sign my name and affix the seal of the Court aforesaid, at the City of New Orleans, this the 2nd day of December, A. D., 1963.

V J Courville

Clerk, Supreme Court of Louisiana

Note to clerk,

Please return entire record to this office when this case becomes final V. J. Courville, clerk.

UNITED STATES OF AMERICA

STATE OF LOUISIANA

SUPREME COURT OF THE STATE OF LOUISIANA

I, V. J. COURVILLE, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the attached pages numbered 1 - 24, inclusive, are true and correct copies of the documents as filed and appearing in the application for writs in the cause entitled "State of Louisiana ex rel. B. Elton Cox versus Bryan Clemmons, Sheriff, East Baton Rouge Parish, Louisiana," bearing number 46,475 on the docket of this Court and number 91,197 on the docket of the Nineteenth Judicial District Court, Parish of East Baton Rouge.

IN WITNESS WHEREOF, I hereunto sign my name and affix the seal of the Court aforesaid, at the City of New Orleans, this the 26th day of December, A. D., 1962.

V. J. Courville
Clerk, Supreme Court of Louisiana

SUPREME COURT OF LOUISIANA

New Orleans

State of Louisiana
ex rel. B. Elton Cox

December 6, 1962

v.

Bryan Clemmons, Sheriff
East Baton Rouge Parish, Louisiana

No. 46,475

- - - - - - - -

In re: State of Louisiana ex rel. B. Elton Cox applying for writs of habeas corpus, certiorari, mandamus and prohibition

- - - - - - - -

WRITS REFUSED. Since the trial judge has fixed a bond of $5000.00 in each case, after conviction, which is the same amount of the original appearance bond in each case furnished by applicant, the fixing of such new bond in the sum of $5000.00 in each case after conviction is not an abuse of discretion on the part of the trial judge; nor do we find the amounts of such bonds to be excessive.

/s/ WBH

/s/ EHMcC

/s/ FWS

/s/ JBH

- - - - - - - -

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
December 6, 1962

Harold A Moise, Jr.
Deputy Clerk

DUPLICATE

DUPLICATE

SUPREME COURT OF LOUISIANA

STATE OF LOUISIANA
EX REL. B. ELTON COX
RELATOR-APPELLANT

46475

VS. NUMBER__________

BRYAN CLEMMONS, SHERIFF
EAST BATON ROUGE PARISH, LOUISIANA
RESPONDENT-APPELLEE

* *

APPLICATION FOR WRITS OF HABEAS CORPUS, CERTIORARI, MANDAMUS AND PROHIBITION, INVOKING ORIGINAL JURISDICTION OF THIS HONORABLE COURT ON THE APPLICATION FOR THE WRIT OF HABEAS CORPUS, AND INVOKING SUPERVISORY JURISDICTION OVER THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, HONORABLE FRED S. LeBLANC, JUDGE PRESIDING, ON THE WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION.

TO THE HONORABLE, CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF LOUISIANA: "

The petition of the STATE OF LOUISIANA on the relation of B. ELTON COX, applying for Writs of Habeas Corpus, Certiorari, Mandamus and Prohibition, with respect represents:

1.

That relator is presently imprisoned, detained and/or restrained of his liberty by the HONORABLE BRYAN CLEMMONS, a resident of and domiciled in East Baton Rouge Parish, State of Louisiana.

2.

That the said HONORABLE BRYAN CLEMMONS is the duly elected Sheriff of the Parish of East Baton Rouge, State of Louisiana, and by virtue of his authority therefrom claims to hold in custody and imprison your relator pursuant to JUDICIAL ORDERS "Remanding to to Await Sentencing" issued out of the Nineteenth Judicial District Court, on November 30, 1962, by the Honorable Fred S. LeBlanc, Judge of the Criminal Division, Parish of East Baton Rouge, State of Louisiana, all as will more fully appear by reference to said Judicial Orders, as reflected by the minutes of November 30, 1962 in State v. Cox, 44,287 and 44,288, all made a part hereof the same as if herein written "in extenso."

2

A. That your relator was charged in Bills of Information numbers 44-287 and 44-288 with violation of L.S.A.-R.S. 14:47 Defamation of Judge Fred A. Blanche Jr., and Defamation of District Attorney Sargent Pitcher, Jr.

B. That a $5,000.00 bond was set in each case which bond was made by relator through the F.A. Morgan Bonding Co., Jim Brewer, Baton Rouge Agent.

C. That on November 29th relator was tried and found guilty on the charge of Defamation of Judge Blanche, case number 44-287.

D. That after conviction relator was not sentenced and as of the time of filing this application he had not been sentenced.

E. That upon conviction counsel for defendant requested that pending sentence relator be released on his then present bond.

F. That the court denied this request of counsel and stated that it would fix bail bond to be in effect from the conviction until the time sentence is imposed herein in the amount of $5,000.00. To this ruling counsel for relator excepted and reserved a formal Bill of Exceptions. Counsel for relator further stated that he would "like to have leave to file an application for a writ of Habeas Copus with the Deputy Clerk"...and that "I would like to serve notice on the Court in this matter that when we file this application we would like to have a hearing on it in a 12 hour period set out by law". See minutes of the court November 29th case number 44-287, a copy of which is attached hereto and made part hereof as if copied herein in full.

G. That on November 30th, 1962, relator was tried and convicted on charge number 44-288.

H. That counsel for relator again requested that relator be released on his present bond to await sentence.

I. That the court denied the request of counsel and stated "...that if counsel requested that he fix bail bond pending sentence herein he would do so.

J. That counsel for relator excepted to the fuling of the court reserving a formal bill thereto.

K. That counsel for relator asked that the court fix a bond in cases number 44-287 and 44-288. See Minutes of the Court case number 44-288 November 30th, 1962 a copy of which is attached hereto and made part hereof as if copied in full.

L. That the court signed two orders fixing appearance bond in cases numbered 44-287 and 44-288 at $5,000.00 in each case abd that said bond is returnable "on the date of sentence for said crime". See true copies of each order attached hereto and made part hereof as if copied in full.

4.

A. That counsel for relator on November 30, 1962 in case number 91,197 filed an application for a Writ of Habeas Corpus asking that the body of relator be brought before the court within twelve hours or sooner to abide what shall be awarded by the court in the premises.

B. That the order authorizing the issuance of the Writ of Habeas Corpus was signed by Judge Fred S. LeBlanc on November 30th, 1962 and that the Writ of Habeas Corpus to the Honorable Bryan Clemmons, Sheriff of the Parish of East Baton Rouge was issued on November 30, 1962. Relator attaches hereto and makes a part hereof as if copied in full a copy of the Application for the Writ of Habeas Corpus, the order authorizing issuance and the Writ to Sheriff Bryan Clemmons.

C. That on December 3, 1962 before the hearing on the Habeas Corpus, the District Attorney Sargent Pitcher, Jr., filed a motion requesting that the Writ be annulled and vacated. Relator attaches hereto and makes part hereof a copy of the Motion opposing the writs.

D. That after hearing the evidence and argument the court rendered judgment recalling the Writ, to this ruling counsel for relator timely excepted reserving a formal bill of exceptions. Relator attaches hereto and makes a part hereof as if copied in full the Minutes of the Court of December 3, 1962 in case number 91,197.

5.

That this Honorable Court has jurisdiction under Article 7 Section 2 of the Constitution of the State of Louisiana 1921 as amended which reads as follows:

> "The Supreme Court, the Courts of Appeal, and each of the judges thereof, subject to review by the Court of which he is amember, and each District Judge throughout the State including judges of the Civil and Criminal District Courts in the Parish of Orleans, may issue Writs of Habeas Corpus, in behalf of any person in actual custody in cases within their respective jurisdictions; and may also, in aid of their respective jurisdictions, original, appellate, or supervisory, issue wirts of Mandamus, certiorari, prohibition, quo warrants, and all other needful writs, orders and process, and where any of said writs are refused, the appellate courts shall indicate reasons therefor".

6.

That your relator specifically relies on L.S.A.-R.S. 15:94 which states in pertinent part:

> "Whenever in a bailable case a person shall have been refused bail or the bail demanded be excessive, such person, if the possible penalty for the crime charged

> be such that the Supreme Court may have appellate jurisdiction, shall have the right to have issued out of the Supreme Court, or by any justice thereof, under its original jurisdiction, a Writ of Habeas Corpus, to the end that he may be released on such bail as the Supreme Court shall fix...provided that all writs of Habeas Corpus...issued under the provisions of this article shall...be returnable...in the rest of the state within such time as the justice signing the writ may deem reasonable, but within three days after service". (underscoring ours)

7.

That the penalty for violation of L.S.A.-R.S. 14:47 is a fine of not more than three thousand dollars, or imprisonment for not more than one year or both.

8.

That relator shows that he has complied with the policy of This Honorable Court by making a part of this application the application for Habeas Corpus filed November 30, 1962 in case number 91,197 in the Nineteenth Judicial District Court which application was refused by judgment of said court on December 3, 1962.

9.

Relator now alleges that there is no law nor jurisprudence authorizing the nullification of a valid and sufficient appearance bond by the court once the defendant has been found guilty in a bailable offense as has been done in this case. Relator further alleges that there is no law or jurisprudence authorizing the requiring of a second appearance bond to be posted by defendant during the interim between conviction and sentencing as was done here.

10.

Realtor now alleges that the customary procedure in the Criminal Courts in bailable offenses in the Nineteenth Judicial District Court is to require only one appearance bond which amply protects the state and which affords defendant his freedom through trial, conviction, sentencing and exhaustion of all appellate remedies.

11.

Relator alleges that to require him to post a second appearance bond to be valid only during the interim between conviction and sentende violates his rights under the Constitution of the State of Louisiana, 1921 Article 1 Section 12, L.S.A.-R.S. 15:94, and the Due Process and Equal Protection of the Laws Claused of the Fourteenth Amendment to the Constitution of the United States of America.

12.

Relator alleges that his contract with the F.A. Morgan Bonding Company through its Baton Rouge agent Jim Brewer provides that the bonds posted in cases numbered 44-287 and 44-288 would be valid through the exhaustion of all appellate remedies in said cases. Relator further alleges that the wrongful nullification of the appearance bonds and the wrongful requirement of interim bonds would cause defendant in order to secure freedom to purchase two additional bonds in violation of his constitutional rights guaranteed by the Constitution of the State of Louisiana 1921 Article one Section twelve and the Due Process and Equal Protection of the laws Clauses of the Fourteenth Amendment to the Constitution of the United States.

13.

Relator alleges that Criminal Judges have the duty of setting appearance bonds sufficiently high in order to amply protect the states interest in having defendants appear in court when ordered. The action of the criminal court herein does not increase the bond already set but wrongfully nullifies a perfectly good bond and wrongfully requires the posting of a second bond for the same amount. Thus causing the accused unnecessary and unwarranted expenses without affording the state any additional protection. This reasoning is particularly forceful when the trial judge specifically states that the second appearance bond is to be valid only between conviction and sentencing which time period conceivably could be only of twenty four hour duration. This violates relator's constitutional rights guaranteed by the Constitution of the State of Louisiana, 1921 Article One Section Twelve and the due Process and Equal Protection of the Laws Clauses of the Fourteenth Amendment to the Constitution of the United States of America.

14.

Relator attaches hereto and makes a part hereof as if copied fully legible copies of the following:

1) The Minutes of the Court for Friday, November 30, 1962 in case number 44-287.

2) The Minutes of the Court for Friday, November 30, 1962 in case number 44-288.

3) The Application for Writ of Habeas Corpus in case number 91, 197 along with the affidavit, order authorizing issuance of the Writ and the Writ commanding Sheriff Bryan Clemmons to produce the body.

4) The two orders fixing the appearance bonds for defendant (note there are no identifying numbers on these) at $5,000.00.

5) The Motion of the District Attorney opposing the Writ of Habeas Corpus.

6) The Minutes of the Court for Monday, December 3, 1962, in case number 91,197.

WHEREFORE, Relator prays that his original bonds be reinstated and that he be immediately released on said bonds and that a Writ of Habeas Corpus issue from this Honorable Court directed to the Honorable Bryan Clemmons, Sheriff of East Baton Rouge Parish, Louisiana ordering him to produce the body of relator, B. ELTON COX, before the Honorable Supreme Court of the State of Louisiana within three days after service of said Writ, or sooner, as directed by this Honorable Court pursuant to L.S.A_ R.S. 15:94;

Relator further prays in the alternative that Writs of Certiorari Mandamus and Prohibition be issued under the seal of this Honorable Court, directed to the Honorable Judge Fred S. LeBlanc, of the Nineteenth Judicial District Court, Parish of East Baton Rouge State of Louisiana commanding said judge to certify and send to this Honorable Court for its review and determination, on a day certain to be therein named, the full and complete record of those proceedings entitled State of Louisiana v. B. Elton Cox cases numbered 44-287 and 44-288 and that the ruling of the Court of November 30, 1962 nullifying the original appearance bonds, requiring new appearance bonds and remanding relator, B. ELTON COX to jail be reversed, set aside and declared null and void and that this Honorable Court order that the original appearance bonds be reinstated and order Judge Fred S. LeBlanc and/or Sheriff Bryan Clemmons to immediately release relator on his original bonds.

And that your relator may have such other and further relief in the premises hereof as to this Honorable Court as may seem meet and just.

ATTORNEYS FOR RELATOR

Nils R Douglas

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

2211 Dryades Street
New Orleans 13, Louisiana

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

OF COUNSEL:

CARL RACHLIN, ESQ.

280 Broadway
New York, New York

STATE OF LOUISIANA

PARISH OF ORLEANS

AFFIDAVIT

BEFORE ME, the undersigned authority, personally came and appeared:

MURPHY W. BELL

who, after being by me first duly sworn, deposes and says:

That he is one of the attorneys for relator in the above and foregoing pleadings; that he prepared the same; that he gave notice of intention to apply to this Honorable Court for Writs of Habeas Corpus, Certiorari, Mandamus and Prohibition in this case in open court to the Judge of the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge, and to the State of Louisiana, through the District Attorneysfor the Parish of East Baton Rouge, State of Louisiana; and that, all of the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.

Affiant further declares that before presenting a copy of the foregoing pleadings to this Honorable Court, a copy of same had been served upon the said Judge and upon the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, by mailing a copy of same to each of said parties, postage prepaid.

Murphy W Bell

MURPHY W. BELL

SWORN TO AND SUBSCRIBED before me this 5th day of December, 1962.

Nils R Douglas

NOTARY PUBLIC

MINUTES OF COURT

FRIDAY, NOVEMBER 30, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA :
VS :
B. ELTON COX :

NO. 44,287 - CRIMINAL SECTION

The trial of this case was resumed, the accused, charged with violation of LSA-R.S. 14:47, being present in court represented by counsel. The remainder of evidence was introduced, the case argued and submitted, and the court, for oral reasons assigned, found the accused guilty as charged, to which ruling of the court counsel for the accused excepted and asked that a formal bill be reserved. Counsel for the accused requested that the accused be permitted to remain free on his present bond until the trial of Number 44,288, State of Louisiana vs. B. Elton Cox, is heard. The court denied this request of counsel for the accused, and stated that it would fix bail bond to be in effect from the present time until the time sentence is imposed herein in the amount of $5,000.00, to which ruling of the court counsel for the accused excepted and asked that a formal bill be reserved on that point. Counsel for the accused stated to the court that he would "like to have leave to file an application for a writ of habeas corpus with the deputy clerk, with leave that we can get a proper number. I would like to serve notice on the court in this matter that when we file this application we would like to have a hearing on it in a twelve hour period as set out by law."

The accused was ordered remanded in the custody of the sheriff.

. . . .

STATE OF LOUISIANA :
VS :
B. ELTON COX :
....

NO. 44,287 - CRIMINAL SECTION

The court, exproprio motu, set aside its order fixing a new bond in this case, no request for bond having been made by counsel for the accused.

::

A TRUE EXTRACT OF THE MINUTES OF COURT THIS 3RD DAY OF DECEMBER, 1962.

Juanita M. McNeil
DY CLERK OF COURT

MINUTES OF COURT

FRIDAY, NOVEMBER 30, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA :
VS :
B. ELTON COX :

NO. 44,288 - CRIMINAL SECTION

This case was called for trial in accordance with previous assignment, the accused, charged with violation of LSA-R.S. 14:47, being present in court represented by counsel.

Counsel for the accused urged a plea of former jeopardy herein, and the court, for oral reasons assigned, overruled the plea of former jeopardy urged herein, to which ruling counsel for the accused excepted and asked that a formal bill of exception be reserved, making a part of the formal bill the oral motion of counsel for the accused and the reasons for the ruling given by the court.

Counsel for the State and counsel for the accused stipulated that on the trial of this case, State of Louisiana vs. B. Elton Cox, Number 44,288, that all of the evidence taken during the trial of State of Louisiana vs B. Elton Cox, Number 44,287, would be the same in the case Number 44,288, reserving unto the defendants all the bills of exception reserved in case Number 44,287. With that stipulation the present case was submitted to the court on the same arguments made in the case of State of Louisiana vs. B. Elton Cox, Number 44,287. Whereupon, the court, for oral reasons assigned in Number 44,287, found the accused guilty as charged, to which ruling of the court counsel for the accused excepted and asked that a formal bill be reserved in this matter. Counsel for the accused requested the court to release the accused on his present bond to await sentence and to allow counsel for the accused sufficient time to file preliminary motions before sentencing, and also to allow the stenographer to prepare the bills of exception and the transcript of all the testimony taken in the two cases, Number 44,287 and 44,288. The court stated that it would grant counsel for the accused sufficient time before sentencing to have the stenographer prepare the bills of exception. The court, for oral reasons assigned, denied the request of counsel to release the accused on his present bond, and stated that if counsel requested that he fix bail bond pending sentence herein he would do so. Counsel for the accused excepted to that portion of the court's ruling that denied the accused the right to remain free on his present bond, and asked that a formal bill of exception be reserved on that point. At this time counsel for the accused requested the court to fix a bond for the accused in both cases, Number 44,287 and 44,288. The court stated that it would adjourn court in order to sign bond orders fixing such bonds. The court ordered that the accused be remanded pending the imposition of sentence in each of these cases.

::

A TRUE EXTRACT OF THE MINUTES OF
COURT THIS 3RD DAY OF DECEMBER, 1962.

Juanita M. McNeil
DY CLERK OF COURT

STATE OF LOUISIANA
EX REL. B. ELTON COX

VS.

BRYAN CLEMMONS, SHERIFF,
EAST BATON ROUGE PARISH,
LOUISIANA.

NUMBER 91,197

19th. JUDICIAL DISTRICT COURT,

PARISH OF EAST BATON ROUGE,

STATE OF LOUISIANA.

. . . .

THE STATE OF LOUISIANA TO HONORABLE BRYAN CLEMMONS, SHERIFF OF THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA,

GREETINGS:

You are hereby commanded, in the name of the State of Louisiana, and of the 19th. Judicial District Court for said Parish of East Baton Rouge, to have the body of B. ELTON COX before the 19th. Judicial District Court, Criminal Division, on the 3rd day of December, 1962 at the hour of 10:00 A. M., to do and receive what shall then and there be considered concerning the said B. ELTON COX, together with the time and cause of his detention and that you have then and there the said writ.

And herein fail not under penalty of the law.

Witness the Honorable Judges of our said Court, at Baton Rouge, Louisiana, this 30th. day of November, 1962.

Ruth White
Deputy Clerk of Court.

A TRUE COPY.
December 3, 1962
James E. Valentine
DY. CLERK OF COURT.

DIVISION " "

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA
EX REL. B. ELTON COX

VS. NUMBER 91197

BRYAN CLEMMONS, SHERIFF,
EAST BATON ROUGE PARISH, LOUISIANA

:::

APPLICATION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE, THE JUDGES OF THE NINETEENTH JUDICIAL DISTRICT COURT, IN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

The petition of the STATE OF LOUISIANA, on the relation of B. ELTON COX (hereinafter referred to as "RELATOR"), respectfully shows:

1.

That relator is presently imprisoned, detained and/or restrained of his liberty by the HONORABLE BRYAN CLEMMONS, a resident of and domiciled in East Baton Rouge Parish, State of Louisiana.

2.

That the said HONORABLE BRYAN CLEMMONS is the duly elected Sheriff of the Parish of East Baton Rouge, State of Louisiana, and by virture of his authority therefrom claims to hold in custody and imprison your relator pursuant to JUDICIAL ORDERS "Remanding to Jail to Await Sentencing" issued out of this Honorable Court on November 30, 1962, by the Honorable Fred S. LeBlanc, Judge of Criminal Division of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, all as will more fully appear by reference to said judicial Orders, as reflected on the minutes of November 30 in State v. Cox, 44,287 and 44,288, and made a part hereof the same as if herein written "in extenso." Certified copy of bond orders attached hereto and made part hereof.

3.

That your relator is charged with the crimes of CRIMINAL DEFAMATION of Judge Fred Blanche, Jr. (LSA-R.S. 14:47) and criminal defamation of Honorable Sargent Pitcher, Jr. (LSA-R.S. 14:47) all misdemeanors under the laws of the State of Louisiana; that relator, being charged with said crimes, is presently held in the JAIL of East Baton Rouge Parish, State of Louisiana, in default of furnishing bail-bond in the sum of TEN THOUSAND and No/100 ($10,000.00) DOLLARS, as previously ordered by this Honorable Court.

4.

That your relator respectfully alleges and avers that he is not guilty of the crimes charged; that the amount of bail-bond fixed on each of said charges is excessive and not commensurate with the respective crime charged, nor comparable to bail-bond customarily fixed and administered by this Honorable Court in such cases; that relator has previously been compelled to pruchase two (2) TEN THOUSAND DOLLAR SURETY BONDS at a premium of 10%; that he alleges on information and belief that he will be compelled to purchase an additional TEN THOUSAND DOLLAR bond after sentencing and during appeal; that these successive nullifications of surety bonds during various stages of the trial deny to your relator equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution. (See Yickwo v. Hopkins 118 U.S. 356 which says in part..."Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution") Relator alleges that this fixing and administering of bail-bond as herein complained of has been applied to only those persons engaged in protests against segregation.

5.

That relator alleges and avers that the aggregate sum of TEN THOUSAND and No/100 ($10,000.00) DOLLARS bail-bond on the crimes charged is not reasonable, the fixing of bail depending upon the moral turpitude of the crime involved, danger to the public from commission thereof, and punishment imposed or authorized by law therefor.

6.

That relator is deprived of legal rights to which he is entitled under law, his imprisonment and inability to furnish excessive bail being a handicap, disabling him in seeing friends, witnesses and securing materials that will be of great value to him on the trial of said causes.

7.

That relator is unable to furnish an additional surety bail-bond in the aggregate sum of TEN THOUSAND and No/100 ($10,000.00) DOLLARS, which your relator avers excessive. However, relator stands ready and is able to make bail-bond in the aggregate sum of TWO THOUSAND and No/100 ($2,000.00) DOLLARS, which amount your relator respectfully suggests is ample to guarantee the production of your relator on the trial of said causes and other judically ordered appearances, and your relator suggests that the purpose of exacting bail-bond, being for the sole purpose of guaranteeing the appearance of relator on the trials, the ends of justice will be served by this Honorable Court reducing the said bail-bonds to the aggregate sum of TWO THOUSAND and No/100 ($2000.00) DOLLARS, which amount relator is able to furnish and which will be ample to protect the rights of the STATE OF LOUISIANA and to guarantee the appearance of relator on the trials of said causes.

8.

That relator alleges and avers that requiring him to furnish bail-bond in the aggregate sum of TEN THOUSAND and No/100 ($10,000.00) DOLLARS for such cases and provided (DEFAMATION violations of LSA-R.S. 14:47) all misdemeanors, is a violation of the Eighth Amendment to the Constitution of the United States of America, the consequences being: deprivation of relator's rights, privileges, immunities and liberties without due process of law and the equal protection of the laws as accorded all citizens of the United States of America by the Fourteenth Amendment to the Constitution thereof, relator being a citizen of the United States of America.

WHEREFORE, your relator, B. ELTON COX, prays:

I. That a copy hereof be served on the HONORABLE BRYAN CLEMMONS, Sheriff of the Parish of East Baton Rouge, State of Louisiana, in

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

AFFIDAVIT

BEFORE ME, the undersigned authority, personally came and appeared:

MURPHY W. BELL

who, after being duly sworn, deposes and says: That he is one of the attorneys of record for the defendant, B. ELTON COX, Mover in the above and foregoing motion; that he prepared said application and read same after its reduction to typewriting, and that, on information and belief, all the facts and allegations therein contained are true and correct.

Murphy W. Bell

MURPHY W. BELL

SWORN TO AND SUBSCRIBED BEFORE ME, this 30 day of November, 1962.

NOTARY PUBLIC

FILED

NOV 30 1962

Ruth White

DY. CLERK OF COURT

FILED Nov. 30 1962

(SIGNED) Ruth White

DY. CLERK

A TRUE COPY Dec. 3 1962

James E. Valentine

DY. CLERK

O R D E R

CONSIDERING the application or petition of B. ELTON COX filed herein, claiming that he is held imprisoned on excessive bail and restrained of his liberty by the HONORABLE BRYAN CLEMMONS in the Jail of East Baton Rouge Parish, State of Louisiana, and it appearing to the Court that a "Writ of Habeas Corpus" ought to issue:

IT IS ORDERED that a "Writ of Habeas Corpus" issue out of and under the seal of this Honorable Court directed to the said BRYAN CLEMMONS, Sheriff of the Parish of East Baton Rouge, State of Louisiana, commanding him to have the body of the said B. ELTON COX before me in the courtroom of this Court at the hour of 10:00 o'clock A.M., on the 3rd day of December, 1962, to do and receive what shall then and there be considered concerning the said B. ELTON COX, together with the time and cause of his detention and that he the said BRYAN CLEMMONS have then and there the said writ.

Baton Rouge, Louisiana, this 30th day of November, 1962.

Fred S. LeBlanc
JUDGE, 19TH JUDICIAL DISTRICT COURT

Baton Rouge La
Dec 3. 1962
Service accepted
B Clemmons Sheriff EBR
By [illegible] Trimble Dy

FILED
NOV 30 1962
Ruth White
Dy. Clerk of Court

FILED Nov. 30 1962
(SIGNED) Ruth White
DY. CLERK
A TRUE COPY Dec. 3 1962
James E. Valentine
DY. CLERK

ORDER FIXING APPEARANCE BOND

STATE OF LOUISIANA,
PARISH OF EAST BATON ROUGE

NINETEENTH JUDICIAL DISTRICT COURT

To the Sheriff of the Parish of East Baton Rouge:

You are hereby authorized to release B. Elton Cox

accused of Violation Of La. R.S. 14:47 (Defamation)

upon a good and solvent bond conditioned as the law directs in the sum of Five Thousand And 00/100 ($5,000.00) DOLLARS

and returnable in the NINETEENTH JUDICIAL DISTRICT COURT in the Parish of East Baton Rouge. On The Date Of Sentence For Said Crime

Thus done and ordered on this 30 day November, 1962

Fred S. LeBlanc
Judge, Nineteenth Judicial District Court
Parish of East Baton Rouge.

A TRUE COPY
Nov 30 1962
DY. CLERK OF COURT.

NOTICE: This order should be delivered to the sheriff immediately after it is issued by the Judge.

KENNEDY PRINT SHOP, INC.

ORDER FIXING APPEARANCE BOND

STATE OF LOUISIANA,
PARISH OF EAST BATON ROUGE

NINETEENTH JUDICIAL DISTRICT COURT

To the Sheriff of the Parish of East Baton Rouge:

You are hereby authorized to release B. Elton Cox

accused of Violation Of La. R.S. 14:47 (Defamation)

upon a good and solvent bond conditioned as the law directs in the sum of Five Thousand And 00/100 ($5,000.00) DOLLARS

and returnable in the NINETEENTH JUDICIAL DISTRICT COURT in the Parish of East Baton Rouge. On The Date Of Sentence For Said Crime

Thus done and ordered on this 30 day November, 19 62.

Fred S. Le Blanc
Judge, Nineteenth Judicial District Court
Parish of East Baton Rouge.

A TRUE COPY
Nov 30 1962
Wolff
DY. CLERK OF COURT.

NOTICE: This order should be delivered to the sheriff immediately after it is issued by the Judge.

KENNEDY PRINT SHOP, INC.

STATE OF LOUISIANA
EX RE L. B. ELTON COX
: NO. 91,197

VS.
: 19TH JUDICIAL DISTRICT COURT
:

BRYAN CLEMMONS, SHERIFF,
EAST BATON ROUGE PARISH,
LOUISIANA
PARISH OF EAST BATON ROUGE
:
: STATE OF LOUISIANA

MOTION

TO THE HONORABLE, THE NINETEENTH JUDICIAL DISTRICT COURT, CRIMINAL DIVISION, WITHIN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

Now into Court, through undersigned counsel, comes and appears Bryan Clemmons, Sheriff of the Parish of East Baton Rouge, made respondent in the above numbered and captioned application for writ of habeas corpus, and with respect, moves this Honorable Court as follows:

1.

That the order heretofore issued by this Honorable Court ordering a writ of habeas corpus issue be now recalled, annulled and set aside for the following reasons, to-wit:

1. That your respondent shows that he was served with said application for writ of habeas corpus less than an hour and a half ago and that under the law he is entitled to Reasonable ~~hours~~' notice prior to hearing.

2. That the District Attorney was not notified of this application as required by law. See 15:124.

3. That from a reading of the petition it is obvious that the relator is imprisoned by virtue of a judicial order, and the petition does not allege or set forth that the order was illegally obtained or executed. See 15:119.

WHEREFORE, mover prays that after all due and legal proceedings had, there be judgment herein in favor of mover, annulling, vacating and setting aside the previous order of this Honorable Court issuing the writ of habeas corpus until the formalities of law have been complied with.

Mover further prays for such additional relief as law, equity and the nature of the case may permit.

By Attorney,

SARGENT PITCHER, JR.
District Attorney
19th Judicial District
Parish of East Baton Rouge

FILED
Dec. 3. 1962
Betty Brady
DY. CLERK OF COURT

FILED Dec. 3 1962
(SIGNED) Betty Brady
DY. CLERK
A TRUE COPY Dec. 3 1962
James E. Valentine
DY. CLERK

MINUTES OF COURT

MONDAY, DECEMBER 3, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA EX REL
B. ELTON COX
VS
BRYAN CLEMMONS, SHERIFF,
EAST BATON ROUGE
PARISH, LOUISIANA

NO. 91,197 - CRIMINAL SECTION

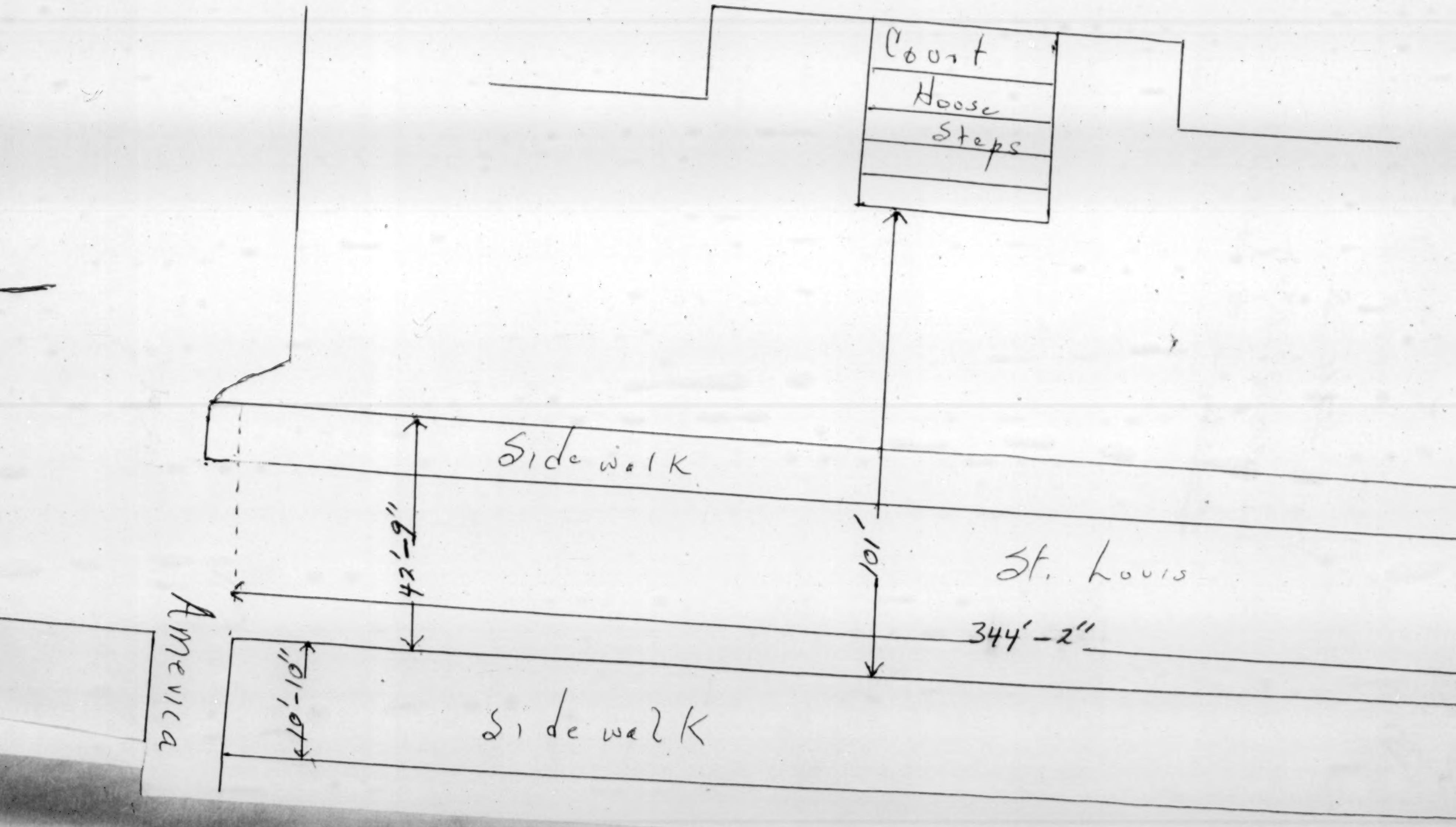
The respondent, through the District Attorney, filed herein a motion praying for judgment in favor of mover, annulling, vacating and setting aside the previous order of this court issuing the writ of habeas corpus until the formalities of law have been complied with. Evidence was introduced, the motion argued and submitted, and the cour for oral reasons assigned, rendered judgment recalling the writ calling for a hearing on December 3, 1962 at 10 o'clock A.M., to which ruling of the court counsel for the accused excepted.

The court ordered that the accused be remanded in the custody of the sheriff to await further orders of the court.

A TRUE EXTRACT OF THE MINUTES OF
COURT THIS 3RD DAY OF DECEMBER, 1962.

Jackie Scullin
DY CLERK OF COURT

Sketch drawn by Wingate M White 1/



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House
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Sidewalk
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101'
St. Louis
344'-2"
America
10'-10"
Sidewalk

cr

SUPREME COURT OF LOUISIANA

No. 46,078

STATE OF LOUISIANA, EX REL. B. ELTON COX,
versus
BRYAN CLEMMONS, SHERIFF, EAST BATON
ROUGE PARISH, LOUISIANA.

In Re: State of Louisiana, ex rel. B. Elton Cox, Applying for Writs of Habeas Corpus, Certiorari, Mandamus and Prohibition.

Application From the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana; Hon. Fred S. LeBlanc, Judge.

ORIGINAL BRIEF
ON BEHALF OF DEFENDANT AND RELATOR IN SUPPORT OF APPLICATION FOR SUPERVISORY WRITS AND HABEAS CORPUS.

COLLINS, DOUGLAS & ELIE,
2211 Dryades Street,
New Orleans 13, Louisiana;
MURPHY W. BELL,
971 South 13th Street,
Baton Rouge, Louisiana,
Attorneys for Defendant and Relator.

Of Counsel:
CARL RACHLIN,
280 Broadway, New York, New York.

Montgomery & Co., "The Brief Specialists", 430 Chartres St., N. O., La.

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SUPREME COURT OF LOUISIANA

No. 46,078

STATE OF LOUISIANA, EX REL. B. ELTON COX,

versus

BRYAN CLEMMONS, SHERIFF, EAST BATON ROUGE PARISH, LOUISIANA.

In Re: State of Louisiana, ex rel. B. Elton Cox, Applying for Writs of Habeas Corpus, Certiorari, Mandamus and Prohibition.

Application From the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana; Hon. Fred S. LeBlanc, Judge.

ORIGINAL BRIEF ON BEHALF OF DEFENDANT AND RELATOR IN SUPPORT OF APPLICATION FOR SUPERVISORY WRITS AND HABEAS CORPUS.

STATEMENT OF JURISDICTION.

This Honorable Court has jurisdiction of this matter by virtue of Article VII, Section 2, of the Louisiana Constitution, wherein it is provided:

> "The Supreme Court, the Court of Appeal, and each of the judges thereof, subject to review by the Court of which he is a member, and each District Judge throughout the state including Judges of the Civil and Criminal District Courts in the Parish of Orleans, may issue writs of Habeas Corpus, in behalf of any person in actual custody in cases within their respective jurisdictions; and may also, in aid of their respective jurisdictions, original, appellate, or supervisory, issue writs of Mandamus, Certiorari, Prohibition, Quo Warrants, and all other needful writs, orders and process, and where any of said writs are refused, the Appellate Courts shall indicate the reasons therefor."

The Criminal District Court for the Parish of East Baton Rouge, Louisiana, in matter No. 42,202, sentenced the defendant to pay a fine of Two Hundred ($200.00) Dollars and imprisonment in the Parish Prison for four months, and in default of payment of fine to imprisonment in Parish Prison for four months additional.

PRINCIPLES OF LAW.

In all criminal cases at least twenty-four hours shall elapse between conviction and sentence, unless the accused waive the delay and ask for the imposition of sentence at once.

L. S. A.-R. S. 15:521;
State v. Mistich, 186 La. 174, 171 So. 841;
State v. Woods, 220 La. 162, 55 So. (2d) 903.

A sentence imposed within 24 hours after defendant's conviction is premature and hence void, in absence of showing that defendant asked for immediate imposition of sentence or intended to waive his rights.

State v. Mistich, supra;
State v. Woods, supra.

Accused's failure to formally object to being sentenced immediately following conviction did not have the effect of waiving the 24-hour delay provided by statute between conviction and sentence.

L. S. A.-R. S. 15:521;
State v. Woods, supra;
State v. Mistich, supra.

Where record discloses no request or declaration by accused sufficient to effect a waiver of the 24-hour delay which statute provides shall elapse between conviction and sentence, sentence imposed immediately following conviction of the crimes of obstructing the sidewalk, disturbing the peace and obstructing justice was premature and therefore void, though accused offered no objection when being sentenced.

L. S. A.-R. S. 14:100.1;
L. S. A.-R. S. 14:103.1;
L. S. A.-R. S. 14:401;
L. S. A.-R. S. 15:521;
State v. Woods, supra;
State v. Mistich, supra.

Where sentence is void because prematurely imposed immediately following conviction without waiver of 24-hour delay provided by statute, motion for a new trial tendered five days after imposition of such void sentence was timely offered and its filing should have been permitted over objection that it came too late because sentence had theretofore been imposed.

State v. Woods, supra;
L. S. A.-R. S. 15:505;
L. S. A.-R. S. 15:521.

Ruling which disallowed the filing of motion for new trial because it was offered after imposition of sentence, where imposition of sentence was premature, is erroneous on the face of the record, and hence such error should be considered by the Supreme Court, even in the absence of a formal bill of exceptions.

State v. Woods, supra;
L. S. A.-R. S. 15:502;
L. S. A.-R. S. 15:503;

L. S. A.-R. S. 15:505;
L. S. A.-R. S. 15:558.

STATEMENT OF FACTS.

(From The Minutes Of The Court).

The case herein is identified by the Number 42-202 of the Criminal Docket of the Nineteenth Judicial District Court for the Parish of East Baton Rouge. The bill of information in this case charges your relator with violations of L. S. A.-R. S. 14:103.1, disturbing the peace. On motion of the district attorney this case was tried simultaneously with three other charges against your relator (minutes of the Court January 29, 1962). The nature and disposition of these cases was as follows:

Court Number	Statute	Offense	Disposition
42-199	R.S. 14:26	Criminal Conspiracy	Not Guilty
42-200	R.S. 14:100.1	Obstructing the sidewalk	Guilty
42-201	R.S. 14:401	Obstructing Justice	Guilty
42-202	R.S. 14:103.1	Disturbing the Peace	Guilty

The trial started on January 29, 1962 and ended January 31, 1962. Relator was found guilty as to three of the four charges on January 31, 1962, and relator was sentenced as to those charges on which he was found guilty on the same day. (Minutes of the Court January 31, 1962). As to this case, relator was sentenced to a $200.00 fine and 4 months in the parish jail and an additional 4 months in default of payment of the fine.

On February 5th, 1962, 5 days after the sentencing of relator at a time when a scheduled hearing on a writ of habeas corpus involving the defendant herein was passed by the Court, counsel for the defendant attempted to file a motion for a new trial in proceedings No. 42-200, 42,201 and 42,202. The district attorney objected to the filing of the motion and the Court sustained said objection. Counsel for the defendant reserved a bill of exceptions to said ruling.

SPECIFICATION OF ERRORS.

1. The trial Court erred in not permitting at least a 24-hour delay between verdict and sentencing since there was no request for immediate sentencing nor was there an indication of an intent to waive the 24-hour delay.

2. The trial Court erred in not permitting the filing of a motion for a new trial on February 5, 1962.

ARGUMENT.

The minutes of the Court of January 31, 1962 conclusively prove that relator was sentenced within 24 hours after conviction.

The issue as to whether or not relator waived his right to the 24-hour delay. It is relator's position that he did not ask for imposition of an immediate sentence nor did he or his attorney make any declaration indicating an intention to waive the delay.

The test as to what constitutes a waiver of the 24-hour delay is suggested in *State v. Woods, 220 La. 162, 55 So. (2d) 902 (1951), at 55 So. (2d) 903.*

> "For the waiver to result, as we appreciate such provision, the accused must either request the imposition of the sentence at once or make some declaration otherwise indicating an intention to waive the delay. . ."

Not only is the test of what constitutes a waiver of the 24-hour delay given in *State v. Woods, supra,* but where we must look for the test is also given. This is what was said at *55 So. (2d) 903:*

> "We are satisfied that this defendant made no request or declaration sufficient to effect a waiver, **for the minutes would have shown it if he had."** (Emphasis ours).

We must look to the minutes of the Court of January 31, 1962 to determine whether a declaration was made indicating an intention to waive the delay. The relevant portion of the minutes are as follows:

> "The Court . . . found the accused guilty as charged in 42,200; 42,201; and 42,202. Counsel for the accused excepted to the ruling of the Court and reserved a formal bill of Exception. . .

> "At this time counsel for the accused **gave notice . . . of his intention to apply for writs** of Certiorari, Prohibition and Mandamus in Nos. 42,200 and 42,202, and made a Motion for an order of Appeal . . . in No. 42,201. . .
>
> "Whereupon the Court sentenced the accused as follows. . . Counsel for the accused **excepted to the verdict and sentence** . . . and reserved a formal Bill of Exception. . .
>
> "Counsel for the accused then **gave notice . . . of his intention to apply . . . for writs** . . . in Nos. 42,200 and 42,202." (Emphasis ours).

The conclusion is inescapable from the above that counsel for the accused intended to resort to the highest Court of the State.

If further evidence be needed of relator's intention not to waive the 24-hour delay reference is made to the minutes of the Court of February 5, 1962, just 5 days after the sentencing of relator. On February 5th, 1962 a scheduled hearing on a writ of habeas corpus involving the relator herein was passed and the following are pertinent excerpts from the minutes:

> "Counsel for the accused stated that he wished to enter an objection to any ruling the Court would make in these cases on the ground that the sentences were illegally imposed, and further stated that he planned to except to any ruling of the Court.

> "The District Attorney requested that the Court fix the time within which counsel for the accused should apply for writs. . . the court fixed the time at . . . in cases No. 42,200 and 42,202. Counsel for the accused objected to the fixing of the time for Application of writs and reserved a formal Bill of Exception. Counsel . . . stated . . . (he) . . . intended to file a Motion for a New Trial. The District Attorney objected . . . on the ground that the Court has lost jurisdiction of the cases. The Court . . . overruled the Motion for a New Trial.
>
> "Counsel for the accused objected to the sentencing of the accused on the grounds that the sentencing was illegal because the defendant was not given the 24-hour delay after verdict before imposition of sentence, and further, that everything which occurred after imposition of sentence, namely, the entering of the appeal and the notice by counsel for the accused to the Court and to the District Attorney of his intention to Apply for Writs was also null and void and without any legal effect.
>
> "The Court . . . ruled that the sentencing of the accused was legal. . . Counsel for the accused excepted to the ruling of the Court and reserved a formal Bill of Exception."

In *State v. Woods*, *supra*, where there was also a question of waiver of the 24-hour delay between conviction and sentence and where 7 days after the alleged illegal sentencing defendant filed a motion for a new trial this was said:

> "Nevertheless, the ruling which disallowed the filing of the Motion for a New Trial (because the Motion was offered after the imposition of sentence) appears erroneous on the face of the record. And this being true, even in the absence of a formal Bill of Exceptions. We can take notice of that error."

Thus applying the above reasoning to the minutes of February 5, 1962 we are impelled to conclude that here, too, is an error patent on the face of the record which requires a ruling ordering submission of said motion for a new trial and a ruling on said motion.

It is admitted that relator did not object to the immediate sentencing but this does not militate against him for as was said in *State v. Mistich, 186 La. 174, 171 So. 841 (1937) at 171 So. 842* in a decision written by Chief Justice Fournet:

> ". . . the fact that he did not formally object, when asked by the Court if he had anything to say before imposing sentence on him, did not have the effect of waiving the delay within the meaning and contemplation of the article."

In *State v. Woods, 220 La. 162, 55 So. (2d) 902 (1951) at 55 So. (2d) 903* in a decision written by Justice Hamiter this was said with reference to the failure of the defendant to object when he was sentenced immediately upon conviction:

> "The minutes of the trial and of other proceedings respecting this defendant, which are deemed a part of the record show that the mentioned delay of at least 24 hours did not elapse, he having been sentenced on the day of his conviction. They also disclose, it is true, that he offered no objection when being sentenced. But as was said in State v. Mistich, 186 La. 174, 171 So. 841, **a defendant's failure to formally object does not have the effect of waiving the delay within the meaning and contemplation of the statutory provision."** (Emphasis ours).

CONCLUSION.

It is submitted that the sentence imposed against the defendant should be set aside and that the cause should be remanded to the Trial Court for the purpose of affording defendant-relator the opportunity of filing a motion for a new trial, a motion in arrest of judgment or such other pleadings as might properly be filed subsequent to conviction and prior to sentencing. It is further submitted that the defendant relator should be permitted to remain free on bail pending the final outcome of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, NILS R. DOUGLAS, member of the bar of the State of Louisiana, hereby certify that a copy of this original brief on behalf of defendant relator in support of an application for supervisory writs and habeas corpus has been mailed by United States mail, postage prepaid, to the District Attorney for the Parish of East Baton Rouge, State of Louisiana, namely Sargent Pitcher, Jr., Parish Court House, Parish of East Baton Rouge, Louisiana.

....

NILS R. DOUGLAS.

Rec'd 9/24

SUPREME COURT OF LOUISIANA

No. 46,084

STATE OF LOUISIANA

versus

GEROME SMITH, DAVID J. DENNIS, DORIS J. CASTLE, JULIA AARON AND CONSTANCE BRADFORD.

Appeal from the Criminal District Court for the Parish of Orleans, State of Louisiana, Section "G"; Hon. Shirley G. Wimberly, Judge Presiding.

ORIGINAL BRIEF IN BEHALF OF DEFENDANTS AND APPELLANTS.

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Appeal from the Criminal District Court for the Parish of Orleans, State of Louisiana, Section "G"; Hon. Shirley G. Wimberly, Judge Presiding.

ORIGINAL BRIEF IN BEHALF OF DEFENDANTS AND APPELLANTS.

STATEMENT OF JURISDICTION.

This Honorable Court has jurisdiction of this matter by virtue of *Article VII, Section 10, paragraph seven, of the Louisiana Constitution*, wherein it is provided:

> "The Appellate jurisdiction of the Supreme Court shall also extend to criminal cases on questions of

law alone, wherever the penalty of death, or imprisonment at hard labor, may be imposed; or where a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed."

The Criminal District Court for the Parish of Orleans in matter Number 170,602 (Supreme Court Number 46,084) sentenced each defendant on count one to pay a fine of Three Hundred and Fifty Dollars ($350.00) and serve three months in the Parish Prison, and three months additional in default of payment of fine. Defendants were sentenced on count two to pay a fine of Two Hundred Dollars ($200.00) and serve two months in the Parish Prison and two months additional in default of payment of the fine. These sentences were to run consecutively.

PRINCIPLES OF LAW.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 1, Fourteenth Amendment, U. S. Constitution.

Freedom of speech, which is guaranteed by the First Amendment against abridgment by the Federal Government, is also within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action.

Cantwell v. Conn., 310 U. S. 296.

The streets are the natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.

Schneider v. State, 308 U. S. 147.

It is the duty of municipal authorities, as trustees for the public, to keep the streets open and available for movement of people and property, the primary purpose to which the streets are dedicated; and to this end the conduct of those who use them may be regulated; but such regulation must not abridge the constitutional liberty of those who are rightfully upon the streets to impart information through speech and picketing.

Schneider v. State, 308 U. S. 141.

Freedom of speech guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.

Thornhill v. Alabama, 310 U. S. 88.

STATEMENT OF FACTS.

The Congress of Racial Equality, commonly known as C.O.R.E., had picketed two downtown New Orleans five- and ten-cent stores since March 11, 1961. (Tr. p. 69.)* These stores were F. W. Woolworth, 1041 Canal Street, and McCrory's, 1005 Canal Street. On the afternoon of Monday, April 17, 1961, two separate arrests were made in which a total of five persons were taken into custody. Gerome M. Smith and David J. Dennis were the first arrested; Doris Castle, Julia Aaron and Constance Bradford were later arrested. These persons were charged with violations of L. S. A.-R. S. 14:100.1 (Obstructing Public Passages) and 14:103.1 (Disturbing the Peace), both state statutes. Of these five all but Constance Bradford were tried and convicted on both charges. Constance Bradford has not yet been tried because she was attending school in the country of Scotland.

All defendants were arrested while picketing the rear entrances of the stores; each defendant except Constance Bradford carried a picket sign about three feet high by two feet wide (Tr. p. 112), mounted on a stick; in essence the picket signs protested against racial discrimination at lunch counters (Tr. p. 67); the picketing was conducted on a sidewalk eight feet by two inches wide (Tr. p. 106); on their trips backwards and forwards across the rear of these stores defendants walked on or near the curbing (Tr. pp. 119, 120);

---

* References are to pages of the transcript of record.

sometimes three-quarters of the sidewalk was available for pedestrian traffic (Tr. pp. 121, 122), and at no time was less than one-half of the sidewalk available for pedestrian traffic. In addition to this, appellants were constantly in motion and at no time did they stop walking. The defendants spoke to no one; did not pass out circulars; did not stop anyone from entering or leaving the stores; did not cause a crowd to gather; did not engage in any fights or disturbances of any sort, and the managers of the two stores did not complain to the police.

After picketing for a short while each defendant was approached by a police officer and asked to stop; each defendant refused and was therefore arrested.

SPECIFICATION OF ERRORS.

1. The trial judge committed prejudicial error when he failed to declare the application of the statutes unconstitutional in that here the statutes were applied to deprive defendants of freedom of speech and expression guaranteed by the First Amendment to the United States Constitution and of due process and equal protection guaranteed by the Fourteenth Amendment to the United States Constitution. (Bill of Exception No. 1.)

2. The trial judge committed prejudicial error when he failed to sustain the motion for a directed verdict in that there was absolutely no evidence tending

to show that defendants committed a breach of the peace. (Bill of Exception No. 2.)

3. The trial judge committed prejudicial error when he refused to grant a new trial and to sustain the motion in arrest of judgment. (Bills of Exception Nos. 3 and 4.)

ARGUMENT.

I. The Second Count of the Bill of Information Is Fatally Defective Because It Fails to Inform Defendants of the Nature and the Cause of the Accusation Against Them.

It is the position of the defendants that the count of the Bill of Information charging violation of L. S. A.-R. S. 14:103.1 is fatally defective because it omits two of the three essential elements of the crime.

L. S. A.-R. S. 14:103.1 provides in pertinent part:

> "A. Whoever with intent to provide a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:
>
> "(1) Crowds or congregates with others . . . in or upon . . . a public sidewalk . . . and who fails or refuses to . . . move on when ordered so to do by any law enforcement officer of any municipality . . . in which such . . . acts are commit-

> ted . . . shall be guilty of disturbing the peace."

Count two of the Bill of Information in its pertinent part reads:

> "Did willfully and unlawfully violate revised statute 14:103.1 as amended by Act 69 of 1960, relative to disturbing the peace by failing and refusing to disperse on public sidewalk when ordered to do so by police . . ."

A casual comparison of the statute and count two of the Bill of Information immediately reveals that two essential elements of the statute are not included in said count two. No allegation is made of (1) intent to breach the peace nor of circumstances such that a breach of the peace could be occasioned thereby, and no allegation is made of (2) crowding or congregating with others. This count of the Bill of Information is therefore fatally defective.

As authority for the above conclusion defendants cite L. S. A.-R. S. 15:227 and Article I, Section 10, of the Louisiana Constitution of 1921. As further authority defendants cite the following quotation from the judgment on rehearing in the case of *State v. Varnado, 208 La. 319, 23 So. (2d) 106 (1944), rehearing (1945)*, which quotation originally comes from *27 Am. Jur. 660, Section 101*, and *27 Am. Jur. 662, Section 103:*

> "It is the modern rule universally applied by the courts, that in charging a statutory offense it is not necessary to use the exact words of the statute. An indictment or information for such an offense is sufficient if it follows the language of the statute substantially or charges the offense in equivalent or others of the same import, if the defendant is thereby fully informed of the particular offense charged, and the court is enabled to see therefrom on what statute the charge is founded . . ."

The effect of the interpretation by the trial Court of L. S. A.-R. S. 14:103.1 is to convert the Bill of Information from a disturbing the peace charge to a charge of refusing to move on.

A Louisiana case in point is *State v. Morgan, 204 La. 499, 15 So. (2d) 866 (1943).* There the charge set out in the Bill of Information was "that S. R. Morgan at the Parish of Calcasieu on or about the 12th day of May in the year of Our Lord One Thousand Nine Hundred and Forty Three (1943) did unlawfully disturb the peace at 1208 Hodges Street in Lake Charles, Calcasieu Parish, Louisiana . . ."

In sustaining the motion to quash this was said at *204 La. 507:*

> "Article 103 of the Criminal Code enumerates a number of acts, the commission of which consti-

> tute the offense of disturbing the peace. None of these specific acts are referred to in the information on which relator is being prosecuted. No facts constituting the offense of disturbing the peace are set out in the information. The information merely alleges that relator was guilty of unlawfully disturbing the peace. This allegation does not set forth any act which, under the article, constitutes the offense. Nor do the words used in the information unequivocally convey the meaning of the article, so that defendant can not be misled as to the charge he is called upon to answer."

While the above case is not on all fours with the instant case, the facts are similar enough to bring it within the holding of the above. The factual differences between the two cases are negligible.

In the *Morgan* case none of the seven enumerated offenses were cited in the bill. In the instant case only one of three essential requisites were cited. In any event the result in the two cases should be the same.

As was pointed out by the Supreme Court of the United States in *United States v. Simmons, 96 U. S. 360, 24 L. Ed. 819*, and cited in Mr. Justice Fournet's dissent at the original hearing in the *Varnado* case at *96 U. S. 362:*

> "Where the offense is purely statutory . . . it is, as a general rule, sufficient in the indictment

> to charge the defendant with acts coming fully within the statutory description in the substantial words of the statute, without expansion of the matter . . . but to this general rule there is the qualification, fundamental in the law of criminal procedure, that the accused must be apprised by the indictment, of what he must be prepared to meet; and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction."

The case of *State v. McQueen, 230 La. 55, 87 So. (2d) 757 (1955)* stands for the proposition that a bill of information which does not apprise the defendant of what he must be prepared to meet on the trial is fatally defective. This is the test set out by the Court at *230 La. 62:*

> "In this case the information is based on conclusions of law, which are legal abstractions affording no protection. The U. S. Supreme Court has spoken and provided a test in such instances. It stated that the test is not whether it (the information) could have been more definite or certain, but whether the information contains the elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet, and in case any other proceedings are taken against him for a similar offense, whether the record shows with

> accuracy to what extent he may plead a former acquittal or conviction. See, Cochran and Sayere v. U. S., 157 U. S. 286, 15 S. Ct. 628, 39 L. Ed. 704; Rosen v. U. S., 161 U. S. 29, 16 S. Ct. 434, 40 L. Ed. 606; Hagner v. U. S., 285 U. S. 427, 52 S. Ct. 417, 76 L. Ed. 861."

Further on the Court quite succinctly says at *230 La. 66:*

> "We do not find anywhere in the Code of Criminal Procedure provision that an accused charged in an indictment or information that fatally fails to apprise him of the acts on which the offenses with which he is sought to be charged is based must probe the innermost recesses of the prosecuting attorney's mind in an effort to ascertain just what acts of his the attorney thinks constitutes a crime."

II. The Convictions Under R. S. 14:103.1 Violate the Due Process Clause of the Fourteenth Amendment Because There Was No Evidence Tending to Prove Essential Elements of the Charge of Disturbing the Peace.

A. There Was No Evidence Tending to Prove That Petitioners Violated R. S. 14:103.1 as Charged in the Information.

In *Thompson v. City of Louisville, 362 U. S. 199,* 204, 206, the United States Supreme Court held that a conviction in a state court must be set aside under the Fourteenth Amendment "if there is no support for these convictions," or "the record is entirely lacking in evidence to support any of the charges," or is "without evidence of his guilt." The decision does not mean that an appellate court may reverse a conviction merely because, upon re-evaluating the record, it finds that the evidence is insufficient to support the conviction. The conviction violates due process, however, if there is **no evidence at all** tending to prove one or more of the essential elements of the offense.

The statute here provides:

> "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:
>
> "(1) Crowds or congregates with others . . . in or upon . . . a public sidewalk . . . who fails or refuses to move on when ordered so to do by any law enforcement officer of any municipality . . . in which such . . . acts are committed . . . shall be guilty of disturbing the peace."

To support a conviction under this statute there must be proof of three basic elements of the offense:

(1) Intent to breach the peace or circumstances such that a breach of the peace may be occasioned.

(2) Crowding or congregating with others.

(3) Refusal to move on.

There was no evidence whatsoever in this case to indicate an intent on the part of the defendants to breach the peace or that the circumstances here were such that a breach of the peace might have been occasioned by the peaceful picketing of the defendants.

There was no evidence whatsoever in the record to indicate that the defendants crowded or congregated with others.

Despite the fact that defendants did refuse to move on, the state could not convict here because they did not introduce evidence on the other two essential, nay indispensable, elements of the crime.

Past decisions defining disturbing the peace make it plain that R. S. 14:103.1 does not embrace peaceful conduct such as that of petitioners. In *Town of Ponchatoula v. Bates, 173 La. 823, 138 So. 851,* the Louisiana Supreme Court defined disturbance of the peace to be "any act of conduct of a person which molests the inhabitants in the enjoyment of that peace and quiet to which they are entitled, or which throws into confusion things settled, or which causes excitement, unrest, disquietude, or fear among persons of ordinary normal temperament." *173 La. at 828.* A challenge to rooted customs may cause intellectual unrest or emotional excitement, but it is plain that the Court's definition of a breach of the peace uses these words to encompass only conduct which is violent, loud, or boisterous, or which is provocative in the sense that it induces a physical disturbance such as fighting, riot or tumult, or which arouses the fear of these disturbances among persons of normal temperament. A later decision makes this plain. In *State v. Sanford, 203 La. 961, 14 So. (2d) 778,* the evidence showed that thirty Jehovah's Witnesses approached a Louisiana town for the purpose of distributing religious tracts and persuading the public to make contributions to their cause. The Witnesses were warned by the mayor and police officers that "their presence and activities would cause trouble among the population and asked them to stay away from the town." . . . *203 La. at 964.* The trial Court found that the Witnesses entering the town and stopping passers-by in the crowded main street under these circumstances "might or would tend to incite rioting and disorderly". *Id. at 965.* The Supreme Court of Louisiana set aside convictions for breach of the peace, thus holding in effect that defendants were not pursuing a "disorderly course of conduct which would tend to disturb the peace." Although the language of the statute was subsequently altered, there is nothing in the charge or in subsequent court decisions to throw doubt upon this ruling.

The latest expression of the United States Supreme Court on want of evidence is in *Taylor v. Louisiana, 82 S. Ct. 1188.* This case involved one of the same statutes as here, L. S. A.-R. S. 14:103.1, and involved refusals by defendants to move from the bus depot in Shreveport, Louisiana, after being ordered to leave by police. The trial Court held that the mere presence of defendants there constituted a breach of the peace.

The United States Supreme Court, in a *per curiam* decision, said at 1189:

> "Here, as in Garner v. Louisiana, 368 U. S. 157, the only evidence to support the charge was that petitioners were violating a custom that segregated people in waiting rooms according to their race, a practice not allowed in interstate transportation facilities by reason of federal law . . . the judgments of conviction must therefore be reversed."

It is submitted that here, as in *Garner*, *supra*, and in *Taylor*, *supra*, that the only evidence to support the charges was that defendants refused to move on when asked to do so by the police. There is no state law in Louisiana which makes it a crime to refuse to move on when ordered to do so by the police. Compare *Sellers v. Johnson, 163 F. (2d) 877; Herndon v. Lowry, 301 U. S. 242*, and *L. S. A.-R. S. 14:7.*

There is no testimony in the record that there were fights, unrest, threats, citizen complaints, that store entrances were blocked, or even, aside from the space occupied by an individual walking with a picket sign, that the sidewalk was obstructed. It is a violation of due process to convict a person without evidence of his guilt. *Thompson v. Louisville, supra.*

III. The Disturbing the Peace Statute (R. S. 14:103.1) Under Which Petitioners Were Convicted Is Unconstitutional in Its Application If Construed, as Here, to Proscribe Peaceful Picketing.

R. S. 14:103.1, one of the statutes under which appellants were charged, has been construed by the state to make peaceful picketing illegal on the theory that it constitutes disturbing the peace. This statute also expressly exempts labor picketing, thus by implication coupled with the interpretation of the trial Court effects an unconstitutional result which was and is now prohibited. *Thornhill v. Alabama, 310 U. S. 88 (1940).*

Thornhill v. Alabama held that peaceful picketing was within the liberties protected by the First and Fourteenth Amendments. *Thornhill* further held that such interest as the state had in protecting public peace was not substantial enough to proscribe peaceful picketing. Such interest as the State of Louisiana has in protecting the public peace is not substantial enough to constitutionally support the application made of the statute.

Even if it be conceded *arguendo* that the statute might be constitutionally enforced in other circumstances, it is not so when its enforcement limits freedom of expression, as here. In a concurring opinion in *Garner v. Louisiana, 368 U. S. 157, 82 S. Ct. 248*, Mr. Justice Harlan said at 272:

> ". . . when a state seeks to subject to criminal sanctions conduct which, except for a demonstrated paramount state interest, would be within the range of freedom of expression as assured by the Fourteenth Amendment, it cannot do so by means of a general and all inclusive breach of the peace prohibition. It must bring the activity sought to be proscribed within the ambit of a statute or clause 'narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the state.' Cantwell v. Connecticut, supra, 310 U. S. at 311; Thornhill v. Alabama, 310 U. S. 88, 105. And of course the interest must be a legitimate one. A state may not "suppress free communication of views, religious or other under the guise of conserving desirable conditions. Cantwell, supra, at 308."

Appellants here were convicted under a disturbing the peace statute which is a supplement to a preexisting disturbing the peace statute. See R. S. 14:103. The crime which the statute created is an offense very unlike the old misdemeanor of disturbing the peace. As applied here, the mere act of one person picketing peacefully against racial segregation is given the dynamic quality of a crime. There is guilt, although there were no fights, riots, angry words, molestation of the public or blocking of pedestrian traffic. Thus in effect the accused is to be punished not for an actual disturbance of the peace but for advocating an end to racial segregation.

The right of free speech is a fundamental right given a preferred position with relationship to the other freedoms guaranteed by the Constitution. This right may not ordinarily be denied or abridged. But although the right to free speech is fundamental, it is not in its nature absolute. Its exercise is subject to restriction, if the particular restriction proposed is required in order to protect the state from serious injury—political, economic or moral. That the necessity which is essential to a valid restriction does not exist unless speech would produce, or is intended to produce, a clear and imminent danger of some substantive evil which the state constitutionally may seek to prevent has been settled. See *Schenck v. United States, 249 U. S. 47, 52.*

It is the function of the Legislature to determine whether at a particular time and under the particular circumstances the intent to breach the peace or presence under circumstances such that a breach of the peace may be occasioned thereby, coupled with crowding or congregating with others and refusing to move on when ordered to do so by the police, constitutes a clear and present danger of substantive evil; and that by enacting the law here in question the Legislature of Louisiana determined that question in the affirmative. The Legislature must decide in the first instance whether a danger exists which calls for a particular protective measure. But where a statute is valid only in case certain conditions exist, the enactment of the statute cannot alone establish the facts which are essential to its validity.

The courts have not yet fixed the standard by which to determine when a danger shall be deemed clear; how remote the danger may be and yet be deemed present; and what degree of evil shall be deemed sufficiently substantial to justify resort to abridgment of free speech as the means of protection. To reach sound conclusions on these matters it is necessary to bear in mind why the state is ordinarily denied the power to prohibit dissemination of social, economic and political doctrine which a vast majority of its citizens believes to be false and fraught with evil consequence.

Fear of serious injury cannot alone justify suppression of free speech. Thus the presence of one in circumstances such that a breach of the peace may be occasioned does not qualify the state to abridge the right of appellants to peacefully picket, nor does the imputation to appellants of intent to disturb the peace qualify the state to abridge peaceful picketing. To justify the suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. In order to support a finding of clear and present danger it must be shown either that the immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated.

No danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. Only an emergency can justify repression. Moreover, even an imminent danger cannot justify resort to prohibition of these functions essential to effective democracy unless the evil apprehended is relatively serious. Prohibition of free speech is a measure so stringent that it would be inappropriate as the means for averting a relatively trivial harm to society. The fact that the picketing is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury **to the state.** The legislative declaration that facts existed within the state which constituted a clear and present danger to a substantial state interest creates merely a rebuttable presumption that said conditions constitutionally exist as a general proposition. We submit that the evidence on record does not constitute facts which authorize the state to constitutionally abridge the right of appellants to peacefully picket against segregation.

If a contrary conclusion were reached, then any time a Negro in Louisiana rebels, be it ever so peaceful, against segregation then he violates R. S. 14:103.1. Every time the N.A.A.C.P. or C.O.R.E. holds a meeting or every time a Negro sits in a front seat of a city bus he may have intent to breach the peace imputed to him or he may be deemed to have been present in a circumstance whereby a breach of the peace may have been occasioned. For Louisiana to infect the administration of its criminal laws by using them to support the custom of segregation offends the salutary principle that criminal justice must be administered "without reference to considerations based on race." *Gibson v. Mississippi, 162 U. S. 565, 591.*

IV. The Disturbing the Peace Statute (R. S. 14:103.1) Under Which Appellants Were Convicted Is, If Applied to Them, So Vague and Uncertain as to Violate Due Process.

A. Due Process Requires That a State Statute Give Fair Notice of What Conduct Is Criminal.

The United States Supreme Court has repeatedly held that a state statute violates the due process clause of the Fourteenth Amendment if it fails (1) to give fair notice of what acts it encompasses and (2) to provide the trier with a sufficiently definite standard of guilt to avoid conviction on an *ad hoc* basis; *e. g., Lanzetta v. New Jersey, 306 U. S. 451; Connally v. General Con-*

struction Co., 269 U. S. 385; Musser v. Utah, 333 U. S. 95; Winters v. New York, 333 U. S. 507, 519. As the United States Supreme Court said in *Connally, 269 U. S. at 391):*

> ". . . a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the First essential of due process of law."

Similarly, in *Lanzetta,* the Court defined the fair notice required by due process as *306 U. S. at 453:*

> ". . . no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids . . ."

Mr. Justice Harlan in his concurring opinion in *Garner v. Louisiana, 82 S. Ct. 248, at page 274,* said:

> "While Cantwell was not explicitly founded on that premise, it seems to me implicit in the opinion that a statute which leaves the courts in uncertainty as to whether it was intended to reach otherwise constitutionally protected conduct must by the same token be deemed inadequate warning to a defendant that his conduct has been condemned by the state . . ."

Thus, when a statute gives a defendant insufficient notice of the conduct prohibited, his conviction is invalid.

B. R. S. 14:103.1 Did Not Give Fair Notice to Petitioners That Their Actions Were Illegal.

Section 103.1 has on its face several ambiguities. It is not entirely clear whether the prosecution must show an actual disturbance or only circumstances such that a disturbance may be occasioned. The statute does not indicate the meaning of the phrase "crowds or congregates with others," and since this is not a phrase of common usage one would be led to speculate as to when his conduct was such that he "crowds or congregates with others." Despite these difficulties, we assume *arguendo* that the statute is constitutional if it is construed to apply only to acts which are violent, loud or boisterous. It was only upon this interpretation that this Court sustained the constitutionality of an earlier but similar disturbing the peace statute. *State v. Sanford, 203 La. 961, 14 So. (2d) 778.*

Appellants' activities, however, did not involve a disturbance of the peace. Each of these appellants was engaged in picketing a store in protest of racial discrimination at a lunch counter. The facts clearly indicate that the police, not the public, were disturbed by the defendants' conduct. The facts show that the state, through the unwarranted action of the police, was itself promoting its own policy of racial discrimination. In such circumstances, we submit that this Court should apply a strict standard in determining whether a statute is unconstitutionally vague; for a vague statute provides all too easy means by which a state can impose *ad hoc* criminal penalties. *Winters v. New York, 333 U. S. 507, 509-510, 517,* indicates that the degree of certainty required for due process is particularly strict in the delicate area of freedom of expression; otherwise, the Court said, expression which is constitutionally protected would be effectively prohibited by the very vagueness of the law. *Smith v. California, 361 U. S. 147, 151.*

There is not a word in R. S. 14:103.1 which clearly and unmistakably prohibits an individual from peacefully patrolling outside of a store with a picket sign for the purpose of protesting racial discrimination. Appellants' conduct caused no disturbance; and there was no reason to foresee a disturbance. If the statute applies to these facts, it can be used to convict anyone for any conduct that the local officials, acting *ad hoc*, find distasteful.

Interpretation of a state statute prior to the defendant's conduct may sometimes clarify otherwise indefinite language sufficiently to satisfy the requirements of fair notice. See, *e. g., Chaplinsky v. New Hampshire, 315 U. S. 568, 574; International Harvester Co. v. Kentucky, 234 U. S. 216.* This statute has not been interpreted by any appellate court of this state. However, the latest decision of this Court on the general subject of disturbing the peace, *State v. Sanford, 203 La. 961, 14 So. (2d) 778,* said the following at *203 La. 970:*

> "* * * to construe and apply the statute in the way the district judge did would seriously involve its validity under our state constitution, because it is well settled that no act or conduct however reprehensible, is a crime in Louisiana, unless it is **defined and made a crime clearly and unmistakably** by statute. * * *" (Emphasis ours.)

This Court has repeatedly recognized that under our state Constitution fair notice is an element of due process. See, *e. g.*, *State v. Christine, 239 La. 259, 118 So. (2d) 403 (1960); State v. Sanford, supra; State v. Kraft, 214 La. 351, 37 So. (2d) 815 (1948).* In *State v. Kraft*, *supra*, the Court explained the requirement of certainty as follows, *214 La. at 356:*

> ". . . it is sufficient to say that a criminal statute, in order to be valid and enforceable, must define the offense so specifically or accurately that any reader having ordinary intelligence will know when or whether his conduct is on the one side or the other side of the border line between that which is and that which is not denounced as an offense against the law."

Since the statute under which petitioners were here convicted has never been interpreted by this Court, we must rely upon previous interpretations of a similar statute. The application of the statute here is directly contrary to the holding of the *Sanford* case, since here the state is applying this statute to punish completely peaceful activity. Thus, petitioners were not given fair notice that their conduct was criminal either by the terms of the statute or by its interpretation in the Louisiana courts.

V. The Obstructing Public Passages Statute (R. S. 14:100.1) Under Which Petitioners Were Convicted Is Unconstitutional in Its Application If Construed, as Here, to Proscribe Peaceful Picketing.

R. S. 14:100.1, one of the statutes under which appellants were charged, has been construed by the state to make peaceful picketing illegal on the theory that it constitutes obstructing public passages. This statute also expressly exempts labor picketing, thus by implication it prohibits other kinds of picketing. This prohibition by implication coupled with the interpretation of the trial Court effects an unconstitutional result which was and is now prohibited by *Thornhill v. Alabama, 310 U. S. 88 (1940).*

Thornhill v. Alabama held that peaceful picketing was within the liberties protected by the First and Fourteenth Amendments. *Thornhill* further held that such interest as the state had in protecting public peace was not substantial enough to proscribe peaceful picketing. Such interest as the State of Louisiana has in protecting the public peace is not substantial enough to constitutionally support the application made of the statute.

Even if it be conceded *arguendo* that the statute might be constitutionally enforced in other circumstances, it is not so when its enforcement limits freedom of expression, as here. In a concurring opinion in *Garner v. Louisiana, U. S. 182 S. Ct. 248*, Mr. Justice Harlan said at 272:

> ". . . when a state seeks to subject to criminal sanctions conduct which, except for a demonstrated paramount state interest, would be within the range of freedom of expression as assured by the Fourteenth Amendment, it cannot do so by means of a general and all inclusive breach of the peace prohibition. It must bring the activity sought to be proscribed within the ambit of a statute or clause 'narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the state.' Cantwell v. Connecticut, supra, 310 U. S. at 311; Thornhill v. Alabama, 310 U. S. 88, 105. And of course the interest must be a legitimate one. A state may not 'suppress free communication of views, religious or other under the guise of conserving desirable conditions.' Cantwell, supra, at 308."

Even though this quotation referred to breach of the peace, we contend that the reasoning can be applied with equal strength to the Obstructing Public Passages Statute. Here the state is attempting to subject peaceful picketing, a kind of conduct which is ordinarily within the range of constitutionally protected freedom of expression, to criminal sanctions. The state cannot do this by means of a vague and uncertain obstructing public passages statute which is not "narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the state." *Cantwell v. Conn.; Thornhill v. Alabama.* Here we have a situation in which there are convictions under a statute which sets no standards and gives no definitions of its terms and leaves to the executive and judicial branches too wide a discretion in its application. The state could not under the facts of this case convict petitioners for obstructing public passages without unconstitutionally applying the statute.

VI. The Obstructing Public Passages (R. S. 14:100.1) Under Which Appellants Were Convicted Is, If Applied to Them, So Vague and Uncertain as to Violate Due Process.

A. Due Process Requires That a State Statute Give Fair Notice of What Conduct Is Criminal. (See Argument p. 21.)

B. R. S. 14:100.1 Did Not Give Fair Notice to Petitioners That Their Actions Were Illegal.

The first paragraph of *14:100.1* reads as follows:

> "No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other

> passageway, or the entrance, corridor or passage of any public building, structure, water craft, or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein."

This statute is most indefinite as to what conduct on the part of an individual shall "obstruct the free, convenient and normal use of various public passages. We are only told that one can obstruct by "impeding, hindering, stifling, retarding or restraining." Further, this statute does not define any of these terms which thereby subjects them to a wide variance of interpretation on the part of public officials seeking to enforce them. The terms used to "define" the offense: "impeding, hindering, stifling, retarding, restraining," are so vague and indefinite as to cause one to speculate as to when his conduct constitutes obstructing public passages. Despite these difficulties, we assume *arguendo* that the statute is constitutional if it is construed to apply to acts which effectively block a public passage in such a way as to be dangerous to the safety of individuals who pass thereon. It is only upon this interpretation that the constitutionality of this statute could be sustained, for, if this statute is construed to proscribe peaceful picketing, then it would be unconstitutional for that reason. (See Argument, p. 26.)

In the instant case the facts clearly indicate that there were two stores being picketed and that at each store there was a single picket patrolling. There was no evidence that the sidewalk was blocked. It appears that the police were concerned because the defendants' picketing put them to the extra trouble of maintaining a surveillance in the area of picketing. In arresting these defendants the state, through the unwarranted action of the police, was itself promoting its own policy of racial discrimination. In such circumstances, we submit that this Court should apply a strict standard in determining whether a statute is unconstitutionally vague; for a vague statute provides all too easy means by which a state can impose *ad hoc* criminal penalties. *Winters v. New York, 333 U. S. 507, 509-510, 517,* indicates that the degree of certainty required for due process is particularly strict in the delicate area of freedom of expression; otherwise, the Court said, expression which is constitutionally protected would be effectively prohibited by the very vagueness of the law. *Smith v. California, 361 U. S. 147, 151.*

There is not a word in R. S. 14:100.1 which clearly, and unmistakably, prohibits an individual from peacefully patrolling outside of a store with a picket sign for the purpose of protesting racial discrimination. Appellants' conduct caused no real obstruction of the sidewalk; and there was no reason to foresee an obstruction of the sidewalk. If the statute applies to these facts, it can be used to convict anyone for any conduct that the local officials, acting *ad hoc,* find distasteful.

This Court has repeatedly recognized that under our state Constitution fair notice is an element of due process. See, *e. g., State v. Christine, 239 La. 259, 118 So. (2d) 403 (1960); State v. Sanford, supra; State v. Kraft, 214 La. 351, 37 So. (2d) 815 (1948).* In *State v. Kraft, supra,* the Court explained the requirement of certainty as follows, *214 La. at 356:*

> ". . . it is sufficient to say that a criminal statute, in order to be valid and enforceable, must define the offense so specifically or accurately that any reader having ordinary intelligence will know when or whether his conduct is on the one side or the other side of the border line between that which is and that which is not denounced as an offense against the law."

Interpretation of a state statute prior to the defendant's conduct may sometimes clarify otherwise indefinite language sufficiently to satisfy the requirements of fair notice. See, *e. g., Chaplinsky v. New Hampshire, 315 U. S. 568, 574; International Harvester Co. v. Kentucky, 234 U. S. 216.* This statute has not been interpreted by any appellate court of this state. Since this is true, there has been no clarification of the vagueness of this statute, and its inherent weaknesses remain. Thus, petitioners were not given fair notice that their conduct was criminal either by the terms of the statute or by its interpretation of our appellate courts.

VII. Discriminatory Enforcement, Even If the Statutes Are Valid, Has Deprived Defendants of Equal Protection Under the Law.

Even if, *arguendo*, the statutes are constitutional on their face, defendants have been deprived of equal protection in that the application of these statutes as to them has been discriminatory due to unequal enforcement. The situation is comparable to that in *Yick Wo v. Hopkins, 118 U. S. 356 (1886)*, in which the Court, after questioning the constitutionality of an ordinance on its face, said at 373:

> ". . . whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpre-

> tation has been sanctioned by this Court in Henderson v. Mayor, etc., of New York, 92 U. S. 259 (Bk. 23, L. Ed. 543); Chy Luny v. Freeman, 92 U. S. 275 (Bk. 23, L. Ed. 550); Ex parte Va., 100 U. S. 339 (Bk. 25, L. Ed. 676); Neal v. Delaware, 103 U. S. 370 (Bk. 26, L. Ed. 267), and Soon Hing v. Crowley, 113 U. S. 703."

Louisiana R. S. 14:100.1 as amended by Act 80 of 1960, and Louisiana R. S. 14:103.1 as amended by Act 69 of 1960, even if they are constitutional, have been arbitrarily, capriciously and discriminatorily applied and administered unjustly and illegally, and only against persons of the Negro race and/or white persons who act in concert with members of the Negro race.

As long ago as *Gibson v. Mississippi, 162 U. S. 565*, a case involving a claim of discrimination in jury procedure, the Court stated the broad proposition that racial discrimination in the administration of criminal laws violates the Fourteenth Amendment. The Court said at *162 U. S. 565, 591:*

> "The guaranties of life, liberty, and property are for all persons within the jurisdiction of the United States or of any state, without discrimination against any because of their race. **Those guaranties,** when their violation is properly presented in the regular course of proceedings, **must be enforced in the courts, both of the nation and of the state, without reference to considerations**

> **based upon race. In the administration of criminal justice no rule can be applied to one class which is not applicable to all other classes.** (Emphasis supplied.)

The Court has repeatedly struck down statutes and ordinances which provided criminal penalties to enforce racial segregation. *Buchanan v. Warley, 245 U. S. 60; Holmes v. City of Atlanta, 350 U. S. 879; Gayle v. Browder, 352 U. S. 903, affirming 142 F. Supp. 707 (M. D. Ala. 1956); State Athletic Commission v. Dorsey, 359 U. S. 533, affirming 168 F. Supp. 149 (E. D. La. 1958)*, were all cases in which criminal laws used to maintain segregation were invalidated. *Cf. Evers v. Dwyer, 358 U. S. 202.* Likewise, in *Yick Wo v. Hopkins, 118 U. S. 356*, the Court nullified a criminal prosecution under a statute which was fair on its face but was being administered to effect a discrimination against a single ethnic group.

The police officer's demand that petitioners discontinue their picketing because of the racial segregation customs and the subsequent arrests based on this demand deprived petitioners of the equal protection of the laws. A similar arrest was said to be an illegal deprivation of civil rights by police officers in *Boman v. Birmingham Transit Co., 280 F. (2d) 531, 533, note 1 (5th Cir., 1960)*, quoting from the decision below sub nom.; *Bowman v. Morgan (N. D. Ala. 1959, C. A. No. 9255), 4 Race Relations Law Reporter 1027, 1031* (otherwise unreported):

> "A charge of 'a breach of the peace' is one of broad import and may cover many kinds of misconduct. However, the Court is of the opinion that the mere refusal to obey a request to move from the front to the rear of a bus, unaccompanied by other acts constituting a breach of the peace, is not a breach of the peace. In as far as the defendants, other than the Transit Company, are concerned, plaintiffs were in the exercise of rights secured to them by law."

CONCLUSION.

Wherefore, it is respectfully submitted that the trial Court committed prejudicial error in each of the rules complained of in Bills Nos. 1 through 4, inclusive, and it is prayed that the verdict and sentence rendered herein be set aside, annulled and vacated, and the defendants discharged, or in the alternative be granted a new trial, and for all appropriate and equitable relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, Nils R. Douglas, member of the bar of the State of Louisiana, hereby certify that a copy of this original brief on behalf of defendants and appellants has been mailed by United States mail, postage prepaid, to the District Attorney for the Parish of Orleans, State of Louisiana, namely, James Garrison, 2700 Tulane Ave., New Orleans, Louisiana.

CR

SUPREME COURT OF LOUISIANA

No. 46,192

STATE OF LOUISIANA

versus

B. ELTON COX.

Appeal From the Nineteenth Judicial District Court for
the Parish of East Baton Rouge, State of Louisiana,
Honorable Fred Blanche, Judge Presiding.

ORIGINAL BRIEF IN BEHALF OF DEFENDANT-APPELLANT.

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SUPREME COURT OF LOUISIANA

No. 46,192

STATE OF LOUISIANA

versus

B. ELTON COX.

Appeal From the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, Honorable Fred Blanche, Judge Presiding.

ORIGINAL BRIEF IN BEHALF OF DEFENDANT-APPELLANT.

STATEMENT OF JURISDICTION.

This Honorable Court has jurisdiction of this matter by virtue of *Article VII, Section 10, paragraph seven, of the Louisiana Constitution,* wherein it is provided:

> "The Appellate Jurisdiction of the Supreme Court shall also extend to criminal cases on questions of law alone, wherever the penalty of death, or imprisonment at hard labor, may be imposed; or where a fine exceeding three hundred dollars

or imprisonment exceeding six months has been actually imposed."

The District Court for the Parish of East Baton Rouge, Louisiana, in this matter sentenced the defendant to pay a fine of $5,000.00 and to serve one year in the parish jail.

PRINCIPLES OF LAW.

Neither failure of defense counsel to object to immediate sentencing of defendant, nor statement of defense counsel that he would reiterate his motions for writs of *certiorari*, mandamus, and prohibition immediately after sentence was passed, amounted to waiver of defendant's right to statutory 24-hour delay between conviction and sentence.

LSA-R. S. 15:521;
State of Louisiana, ex rel. B. Elton Cox v. Bryan Clemmons, Sheriff, East Baton Rouge Parish, Louisiana., ——La.——, 142 So. (2d) 794 (1962).

STATEMENT OF FACTS.

The case on appeal herein is identified by number 42-201 of the Criminal Docket of the Nineteenth Judicial District Court for the Parish of East Baton Rouge.

The Bill of Information in this case charges appellant with violation of *L. S. A.-R. S. 14:401*, Obstructing Justice. On motion of the District Attorney this case was tried simultaneously with three other charges against appellant. (Minutes of the Court January 29, 1962). The nature and disposition of these cases at the trial level was as follows:

Court Number	Statute	Offense	Disposition
42-199	R. S. 14:26	Criminal Conspiracy	Not guilty
42-200	R. S. 14:100.1	Obstructing the Sidewalk	Guilty
42-201	R. S. 14:401	Obstructing Justice	Guilty
42-202	R. S. 14:103.1	Disturbing the Peace	Guilty

The cases numbered 42-200 and 42-201 were brought up to this Court under its supervisory powers following the District Court's refusal to make peremptory alternative writs of *habeas corpus* granted on the petition of the relator (appellant herein). See *State of Louisiana, ex rel. B. Elton Cox v. Bryan Clemmons, Sheriff, East Baton Rouge Parish, Louisiana (supra).* Since the facts in that case are identical to the facts in this case we quote from the decision of the Court (at p. 794):

> "Initially, relator was charged in separate bills of information (docketed under Numbers 42,200, 42,201 and 42,202) for violating L. R. S. 14:

100.1, 14:401, and 14:103.1. On January 31, 1962 he was adjudged guilty on all three charges. Immediately thereafter (on the same day), to quote from the court minutes, the following occurred:

"At this time counsel for the accused gave notice in open court to the Court and to the District Attorney of his intention to apply to the Honorable the Supreme Court of the State of Louisiana for writs of certiorari, prohibition and mandamus in Nos. 42,200 and 42,202, and made a motion for an order of appeal returnable to the Honorable the Supreme Court of the State of Louisiana in No. 42,201, at which time the District Attorney suggested that the request was premature. **Counsel for the accused then stated to the Court that he would reiterate his motions immediately after sentence was passed.**

"Whereupon, the Court sentenced the accused as follows: (Here is a recitation of the sentences given in the three cases.) Counsel for the accused excepted to the verdict and sentence of the Court and reserved a formal bill of exception * * *.

"Counsel for the accused then gave notice in open court to the Court and to the District Attorney of his intention to apply to the Honorable the Supreme Court of the State of Louisiana for writs of certiorari, prohibition and mandamus in Nos. 42,200 and 42,202.

"On motion of counsel for the accused, an order of appeal was entered herein in No. 42,201 returnable to the Honorable the Supreme Court of the State of Louisiana on Friday, March 30, 1962." (Emphasis and brackets ours).

"On February 5, 1962, at which time relator was complaining about his not having been granted the statutory twenty-four hours' delay before sentencing, the court set a return date respecting the proposed applications for remedial writs. It also denied relator's request to file motions for a new trial.

"On February 21, 1962, the last day designated for the filing of such applications here, relator's counsel stated to the court that he had abandoned his intention of so applying and desired to proceed by habeas corpus. (The appeal requested and ordered in case Number 42,201 was perfected)."

This is the matter presently before the Court.

SPECIFICATION OF ERRORS.

1. The trial Court erred in not permitting at least a 24-hour delay between verdict and sentencing since there was no request for immediate sentencing nor was there an indication of an intent to waive the 24-hour delay.

ARGUMENT.

Since we think that the decision in this case is controlled by the holding in the case of *State of Louisiana, ex rel. B. Elton Cox, v. Bryan Clemmons, Sheriff East Baton Rouge Parish, Louisiana,* —— *La.* ——, *142 So. (2d) 794 (1962)*, we quote the following from the Court's decision at *142 So. (2d) 795:*

> "In its brief to this court the state concedes that a failure to observe the twenty-four hours' delay provided for in L. R. S. 15:521 renders a sentence illegal, unless the defendant has waived his right thereto. Moreover, it admits that the sentences in the instant cases were imposed immediately after the convictions.
>
> "The position of the district attorney herein is that the conduct of defense counsel, as shown by the court minutes quoted above, amounted to a waiver of the delay and to a request by the accused for immediate sentencing. In support of that position he cites State v. Woods, 220 La. 162, 55 So. (2d) 902, in which we observed that the delay need not be expressly waived; that a waiver would result when an accused, or his counsel, makes some declaration indicative of an intention to waive.
>
> "We find nothing having been said by either the accused or his counsel in the instant matters indicating an intention to waive the statutory de-

lay in question. The mere failure of counsel to object to the immediate sentencing did not constitute a waiver. See State v. Woods, supra. Actually, it appears that none of the parties involved, including the district attorney and judge, gave any thought to the requirement contained in L. R. S. 15:521.

"The statement of defense counsel (heavily relied on by the district attorney) 'that he would reiterate his motions immediately after sentence was passed' did not, in our opinion, indicate an intentional waiver of the delay. It was simply a declaration that the accused would seek relief from the convictions following the imposition of **legal** sentences."

CONCLUSION.

For the reasons so ably stated by this Court in its prior decision, it is submitted that the sentence imposed against the defendant within 24 hours of conviction is an error patent on the face of the record and that said sentence should be set aside and the cause should be remanded to the trial Court for the purpose of affording defendant-appellant the opportunity of filing a motion for a new trial, a motion in arrest of judgment or such other pleadings as might properly be filed subsequent to conviction and prior to sentencing. It is further submitted that the defendant-appellant should be permitted to remain free on bail pending the final outcome of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, Robert F. Collins, member of the bar of the State of Louisiana, hereby certify that a copy of this original brief on behalf of defendant-appellant has been mailed by United States mail, postage prepaid, to the District Attorney for the Parish of East Baton Rouge, State of Louisiana, namely, Sargent Pitcher, Jr., Parish Courthouse, Parish of East Baton Rouge, Louisiana.

ROBERT F. COLLINS

SUPREME COURT OF LOUISIANA

No. 46,618

CORE

STATE OF LOUISIANA

versus

B. ELTON COX.

Appeal from the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana; Honorable Fred A. Blanche, Judge.

ORIGINAL BRIEF IN BEHALF OF DEFENDANT-APPELLANT.

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PREME COURT OF LOUISIANA

No. 46,618

STATE OF LOUISIANA

versus

B. ELTON COX.

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l from the Nineteenth Judicial District Court for
e Parish of East Baton Rouge, State of Louisi-
ana; Honorable Fred A. Blanche, Judge.

ORIGINAL BRIEF
N BEHALF OF DEFENDANT-APPELLANT.

STATEMENT OF JURISDICTION.

This Honorable Court has jurisdiction of this r by virtue of *Article VII, Section 10, para- seven, of the Louisiana Constitution,* wherein it vided:

> "The Appellate jurisdiction of the Supreme Court shall also extend to criminal cases on questions of law alone, wherever the penalty of death, or imprisonment at hard labor, may be imposed; or where a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed."

The Criminal District Court for the Parish of East Baton Rouge, in matter No. 42-201 (Supreme Court No. 46-618), sentenced appellant to pay a fine of $5,000.00 and one year in the parish prison, and, in the event of nonpayment of the fine, an additional year in prison.

PRINCIPLES OF LAW.

1. The states are denied the power to prohibit the dissemination of social, economic and political doctrine.
   First and Fourteenth Amendments.

2. State statutes regulating free speech are narrowly construed.
   Hague v. C.I.O., 307 U. S. 496;
   Thomas v. Collins, 323 U. S. 516;
   Niemotko v. Maryland, 340 U. S. 268;
   Near v. Minn., 283 U. S. 679;
   Kunz v. N. Y., 340 U. S. 290;
   Poulas v. N. H., 345 U. S. 395, dissenting opinions of Justice Douglas and Justice Black.

3. Peaceful picketing is included within the protective shield of the First and Fourteenth Amendments. *Thornhill v. Alabama, 310 U. S. 88.*

4. State statutes seeking to subject to criminal sanctions conduct which except for a demonstrated paramount state interest would be within the range of freedom of expression must be narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the state and must be narrowly construed by the courts.

5. Trial of a misdemeanor before a judge alone in a segregated courtroom is a violation of defendant's rights, privileges and immunities under the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF FACTS.

Sometime very early in December, 1961, Ronnie Moore, president of the Baton Rouge Chapter of the Congress of Racial Equality and student at Southern University, attempted to reach certain Baton Rouge merchants to make known complaints that Negro clients had and to negotiate a satisfactory settlement. The complaints were that Baton Rouge merchants maintained segregated store facilities and engaged in discriminatory employment policies. These attempts to communicate and negotiate were futile.

Subsequently, several news releases (Tr. pp. 417, 420) were made, and two leaflets were put out by the Baton Rouge Chapter of C.O.R.E. outlining the complaints, the futile efforts to negotiate, and in general protesting segregation and discrimination (Tr. p. 402). The second leaflet called for a selective buying campaign by Negroes in protest against the merchants. Several meetings were held at Camphor Memorial Methodist Church and at St. Mark's Methodist Church, after which the decision was made to picket certain stores since no relief was forthcoming.

On Thursday, December 7, 1961, C.O.R.E. sent letters to 12 Baton Rouge merchants demanding desegregation of their facilities and cessation of their discriminatory employment practices. (State evidence, Tr. pp. 178, 189-192.)

On Friday and Saturday, December 8 and 9, direct nonviolent action clinics were held at St. Mark's Methodist Church at North 14th and Convention Streets. This was an institute for training students and C.O.R.E. members in the Baton Rouge area for direct nonviolent action against racial segregation and discrimination. (State evidence, Tr. p. 190.)

Twenty-three Negro college students were arrested on December 14, 1961, while picketing several downtown Baton Rouge retail stores. That night Ronnie Moore addressed a mass meeting of students on the Southern University campus, where he spoke for about

40 minutes, announced that there would be a protest march to the courthouse in Baton Rouge on the next day, gave out instructions as to the time, place of assembly and route to be taken. (Tr. p. 439.)

At the trial of appellant herein, Rev. B. Elton Cox, Moore testified that he, not Cox, was to have led the march, but his arrest that morning prevented him from so doing. (Tr. pp. 424, 439; also see Tr. p. 510.)

On December 15, 1961, some one thousand five hundred or more (Tr. pp. 51, 77, 269, 282, 313, 316, 355) Negro college students protested against segregation, discrimination and the previous day's arrest of twenty-three students.

Rev. B. Elton Cox, leader of the march, informed Chief of Police Wingate White (Tr. pp. 99, 100, 101):

> "We are here to demonstrate the cause of . . . the people who you have in jail who were arrested for picketing . . . we are going to sing some songs, patriotic songs, say some prayers . . ."

Rev. B. Elton Cox further said his speech would take seven minutes and the whole program would take between seventeen and twenty-five minutes. (Tr. p. 471.) To this, Chief W. White said (Tr. p. 101), "all right you got seven minutes but no more." After taking some ten minutes (Tr. p. 104) to assemble, the group pledged allegiance to the flag, recited the Lord's

Prayer, sang a couple of songs, and Rev. B. Elton Cox made a nonviolent speech. (Tr. pp. 29, 37, 44, 63, 124, 158, 268, 302, all testimony of state's witnesses.) No violence occurred (Tr. pp. 20, 67, 127, 262, state's witnesses); the only disorder was the confusion which resulted from the tear gas being thrown by the police and the use of police dogs (Tr. pp. 93, 165). There were no physical acts of violence towards anyone. (Tr. pp. 127, 262, state's witness); in fact, no arrests were made (Tr. pp. 79, 89, 96, 329). Among other things, Rev. B. Elton Cox said in his speech (Tr. pp. 518, 519):

> ". . . all right. It's lunch time. Let's go eat. There are twelve stores we are protesting. A number of these stores have twenty counters, they accept your money from nineteen. They won't accept it from the twentieth counter. This is an act of racial discrimination. These stores are open to the public. You are members of the public. We pay taxes to the Federal Government and you who live here pay taxes to the state."

And at Tr. p. 19, ". . . so go to the designated places and sit until you are waited on . . ." (For a summary of the speech, see Tr. pp. 272, 273, state's witness William H. Daniels.) Nothing done during the demonstration or during Rev. Cox's speech indicated that the demonstrators intended doing anything other than singing, praying and sitting-in at the downtown lunch counters. (Tr. pp. 12, 19, 29, 35, 43, 64, 83, 84, 99, 100, 101, 105, 111, 118, 120, 153, 235, 236, 255, 273, 281-A, 285, 294, 298, 351, 371, all state's witnesses.) The most lucid explanation of the intent of Rev. B. Elton Cox and the demonstrators is given in the testimony of a witness for the state, an attorney, G. Dupre Litton, at pages 37 and 39 of the transcript. Mr. Litton said at page 37:

> "Yes, he said that in effect that it was a protest against the illegal arrest of some of their members and that other people were allowed to picket and that they should have the right to picket . . ."

And at page 39, in response to a question by the Court:

> "He said that they were there to protest the arrest, and I believe he said—your Honor, I can't remember it word for word. I think he said to protest the illegal arrest of some of their members for picketing and that other people were allowed to picket and that they should be allowed to picket.
>
> "He said that to the group that was on the sidewalk as I have described. Of course he was saying it loud enough that it could be heard by, I would think by people on both sides of the street."

While this orderly demonstration (Tr. pp. 23, 44, 90, 117, 119, 124, 140, 169, 205, 237, 319, 354, 376) was going on some 150 to 200 persons of the white race

(Tr. pp. 36, 166) gathered on the courthouse steps on the east side of St. Louis Street. This was not a hostile group. (Tr. pp. 27, 28, 167.) There were also present some 80 or 90 policemen (Tr. pp. 254, 312, 316, 355) who could handle any situation which would have arisen (Tr. pp. 327, 329, state's witness).

Sometime immediately before the tear gas was thrown, the prisoners in jail started to sing. The students quickly responded with a jubilant cheer or yell. (Tr. pp. 54, 120.) The testimony is conflicting as to whether the speech came first on the spontaneous yell of the students. However, Rev. B. Elton Cox had complete control over the students at all times. (Tr. pp. 35, 38, 107, 119, 123, 124, 257, 313, 355.) Finally, Sheriff Bryan Clemmons said, ". . . you have been allowed to demonstrate. Up until now your demonstration has been more or less peaceful, but what you are doing now is a direct violation of the law, a disturbance of the peace, and it has got to be broken up immediately." (Tr. p. 354.) Immediately thereupon the tear gas bombs were shot, and the students dispersed in confusion.

It is important to note that the time this demonstration occurred was about 12 o'clock noon, the usual lunch hour. Further, at the time of this demonstration none of the twenty-three persons arrested on December 14 were in Court for either arraignment or trial. (Tr. pp. 346-349.)

Several hours after the demonstration Rev. Cox was arrested at a church in Scotlandville, La., and charged with disturbing the peace, obstructing the sidewalk, obstructing justice and criminal conspiracy. The defendant was tried in the Nineteenth Judicial District Court and found guilty of obstructing justice, obstructing the sidewalk and disturbing the peace. The only case before this Court at this time is the appeal of the obstructing justice charge.

SPECIFICATION OF ERRORS.

1. A subjective standard of guilt cannot be used to regulate free speech, therefore L. S. A.-R. S. 14:401 is unconstitutional on its face.

2. The trial judge committed prejudicial error when he did not hold that the bill of information was fatally defective in violation of the Sixth Amendment to the Constitution of the United States and in violation of Article 1, Section 10, of the Constitution of the State of Louisiana, 1921, and in violation of L. S. A.-R. S. 15:227, Article 227, of the Code of Criminal Procedure. (Bills of Exception Nos. 1, 2 and 3.)

3. The trial judge committed prejudicial error when he failed to declare the application of the statute unconstitutional in that here the statute was applied to deprive defendant of freedom of speech, assembly and expression guaranteed by the First Amendment to the United States Constitution and

of the due process and equal protection guaranteed by the Fourteenth Amendment to the United States Constitution. (Bill of Exception No. 1.)

4. The trial judge committed prejudicial error in finding the defendant guilty when the state failed completely to prove one of the essential elements of the crime, specific intent.

5. The trial judge committed prejudicial error because in finding the defendant guilty he applied the wrong standard.

6. The trial judge committed prejudicial error when he refused the motion to desegregate the courtroom. (Bills of Exception Nos. 2, 3 and 4.)

7. The trial judge committed prejudicial error when he refused the application for a bill of particulars, and when he refused the motion to quash, the motion to desegregate the courtroom, the motion for a new trial and the motion in arrest of judgment. (Bills of Exception Nos. 1, 2, 3 and 4.)

ARGUMENT.

I.

A Subjective Standard of Guilt Cannot Be Used to Regulate Free Speech, Therefore L. S. A.-R. S. 14:401 Is Unconstitutional on Its Face.

We will assume *arguendo* that interfering with, obstructing and impeding the administration of justice is illegal. We also assume *arguendo* that influencing a judge, juror, witness or court officer in the discharge of his duty is also illegal.

It can safely be stated that mere unaided intent to accomplish any act, no matter how bad, is not a crime. Further, there is no Louisiana statute which *per se* prohibits picketing, parading, use of a sound truck or other device or resort to demonstrations.

The question then is, if the acts are not prohibited, how can the act plus a subjective element intent to interfere, etc., be constitutionally prohibited?

L. S. A.-R. S. 14:401 provides no completely objective standard of guilt. One's presence in or near a courthouse while picketing, etc., is sufficient cause, particularly if one is advocating an unpopular view, to have imputed to him intent to interfere, etc. There is no reasonable nor constitutional relationship between picketing, etc., and imputing to the person picketing an intent to influence court, etc. Picketing, etc., has traditionally been an exercise of free speech as long as one does not overreach the bounds of advocacy into the area of incitement. Thus, traditionally, it has been permissible to attempt through advocacy to influence anyone. Traditionally, it has not been permissible to influence anyone through threats, violence or force. L. S. A.-R. S. 14:401 on its face is violative of the First and Fourteenth Amendments because, not prohibiting incitement, threats or violence, it expressly prohibits free speech.

It cannot reasonably be said that a person who pickets, etc., in or near a courthouse must have adverted to the prescribed criminal consequences as reasonably certain to result from his act. To put it another way, it's not common experience to expect to influence a judge or obstruct the administration of justice by mere picketing. Nor do the circumstances surrounding the act of appellant herein indicate that appellant actively desired to interfere with the administration of justice, etc.

The fatal defect of 14:401 is that it uses intent at all. Any use of the standard intent in a statute prohibiting speech or even regulating speech is unconstitutional because mere intent can never cause a clear and present danger. We maintain that only objective standards of guilt can be used to constitutionally regulate free speech.

II.

The Bill of Information Is Fatally Defective.

L. S. A.-R. S. 14:401, the statute under which defendant was convicted, reads in pertinent part:

> "Whoever, with the intent of interfering with, obstructing or impeding the administration of justice, or with the intent of influencing any Judge, witness or court officer, in the discharge of his duty pickets or parades in or near a building housing a court of the State of Louisiana,

> or in or near a building or residence occupied or used by such judge, juror, witness, or court officer . . . or resorts to any other demonstration in or near any such building or residence shall be fined . . ."

The bill of information under which defendant was charged and convicted reads in pertinent part:

> ". . . he, with the intent of interfering with, obstructing, and impeding the administration of justice, **and** with the intent of influencing a judge, witnesses and court officers in the discharge of their duty, did picket, parade **and engage in a demonstration** . . ." (Emphasis ours.)

An analysis of L. S. A.-R. S. 14:401 shows that there are a series of acts, any one of which standing alone would be sufficient to convict. Intent to interfere with the administration of justice; intent to obstruct the administration of justice; intent to impede the administration of justice; intent to influence any judge in the discharge of his duty; intent to influence any juror in the discharge of his duty; intent to influence any witness in the discharge of his duty; intent to influence a court officer in the discharge of his duty; use of a sound truck or similar device with intent to accomplish any of the previously mentioned acts; or resorting to any other demonstration in or near a state court, etc., with the intent to accomplish any of the previously mentioned acts, is sufficient to convict. Thus there are at least 21 different acts which the statute prohibits.

In order to convict, the statute requires a combination of two acts—one physical, one mental. The physical acts are picketing, parading, use of a sound truck or similar device, or resorting to any other demonstration. These physical acts must be done in or near a state court or building or residence occupied or used by parties named in the statute. The mental requirement is intent to do certain things.

It will be noticed that the acts prohibited in the statute are stated in the disjunctive or in the alternative. It will also be noticed that the bill of information lists the acts in the conjunctive or *in solido.* The bill of information in other respects tracks the statute, but since the statute only generally prohibits *e. g.*, ". . . with the intent of influencing **any** judge . . ." (emphasis ours), it is necessary, in order to draw a valid bill of information, that specific parties be named. The bill says a judge was intended to be influenced. This is not enough—a specific judge must be named. The state should have adduced testimony from the judge. Specific witnesses who were intended to be influenced by the defendant should have been specifically named in the bill, and the state should have adduced evidence from them. The same is true of court officers who were not specifically named in the bill.

The bill of information violates the Sixth Amendment of the Constitution of the United States, Article I, Section 10, of the Constitution of the State of Louisiana, 1921, and L. S. A.-R. S. 15:227.

The Sixth Amendment reads in pertinent part:

> "In all criminal prosecutions, the accused shall enjoy the right . . . be informed of the nature and cause of the accusation. . . ."

Article 1, Section 10, of the State Constitution reads in pertinent part:

> "In all criminal prosecutions the accused shall be informed of the nature and cause of the accusation against him . . ."

L. S. A.-R. S. 15:227 reads:

> "The indictment must state every fact and circumstance necessary to constitute the offense, but it need do no more, and it is immaterial whether the language of the Statute creating the offense or words unequivocally conveying the meaning of the statute be used."

The bill of information herein does not meet the test of the above-mentioned constitutional provisions and statutes. It also does not meet the test as interpreted by the courts. *United States v. Cruisbank, 97 U. S. 542, 23 L. Ed. 588,* says:

> ". . . The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defense, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and second to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this facts are to be stated not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth with reasonable particularity of time, place and circumstance."

Appellant assumes *arguendo* that the statute may be sufficient to legally characterize the offense, but it is our position that the bill of information is wholly insufficient to inform the accused of the nature and cause of the offense. See *State v. Varnado, on rehearing, 208 La. 319, 23 So. (2d) 106 (1944)*, which says in part:

> ". . . the statute may be sufficient to describe or legally characterize the offense denounced, and yet be wholly insufficient to inform the accused of the specific offense of which he is accused . . ."

The case of *State v. McQueen, 230 La. 55, 87 So. (2d) 757 (1955)*, is also in point. It says:

> "In this case the information is based on conclusions of law, which are legal abstractions affording no protection . . . the test is not whether it (the information) could have been more definite or certain, but whether the information contains the elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet, and in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction."

The bill of information is vague and uncertain. The courts have said that statutes cannot be vague and uncertain without violating due process of law. This is what was said in that connection in *United States v. Reese, 92 U. S. 214, 23 L. Ed. 563, 565 and 566:*

> ". . . It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large . . ."

This is precisely what the bill of information herein has done. A net has been set. If the legislatures are prohibited from using catch-all statutes, a district attorney is prohibited from using catch-all bills of information.

III.

The Obstructing Justice Statute (R. S. 14:401) Under Which Appellant Was Convicted Is Unconstitutional in Its Application If Construed as Here to Proscribe Freedom of Assembly, Freedom of Speech and Peaceful Picketing.

It is the function of the state to determine whether at a particular time and circumstance certain acts should be prohibited. A state cannot, however, proceed unfettered in the establishment of laws. The overriding consideration to state policy is national policy, which national restriction is particularly forceful when the statute is challenged as depriving free assembly, speech and peaceful picketing.

National policy gives free speech a preferred and fundamental position. Although fundamental, it is not absolute. It may be regulated, though not prohibited. Speech may be regulated only to protect the **state**, not individuals, parties or group sentiment. Only a clear and present danger vindicates regulation of speech. A state's declaration, in the first instance, that a clear and present danger exists does not alone establish the facts essential to the statute's validity. This merely creates the rebuttable presumption that said facts constitutionally exist.

Appellant's argument is rooted in the following:

(1) The states are denied the power to prohibit dissemination of social, economic and politi-

cal doctrine. *First and Fourteenth Amendments, U. S. Constitution; Thornhill v. Alabama, 310 U. S. 88; Cantwell v. Conn., 310 U. S. 296.*

(2) State statutes regulating free speech are narrowly construed. *Hague v. C.I.O., 307 U. S. 496; Thomas v. Collins, 323 U. S. 516; Niemotko v. Maryland, 340 U. S. 268; Near v. Minn., 283 U. S. 679; Kunz v. N. Y., 340 U. S. 290;* dissenting opinions of Mr. Justice Douglas and Mr. Justice Black in *Paulos v. N. H., 345 U. S. 395.*

(3) Peaceful picketing has since 1940 been included within the protective shield of the First and Fourteenth Amendments. *Thornhill v. Alabama, 310 U. S. 88.*

(4) When a state seeks to subject to criminal sanctions conduct which except for a demonstrated paramount state interest would be within the range of freedom of expression as assured by the Fourteenth Amendment, it must bring the activity sought to be proscribed within the ambit of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the state. *Cantwell v. Conn., supra; Thornhill v. Alabama, supra; Garner v. Louisiana, 368 U. S.*

157; concurring opinion of Mr. Justice Harlan.

R. S. 14:401 is not a regulatory statute, because, being criminal, it prohibits entirely and without qualification. A statute in order to be regulatory must permit the subject activity under certain circumstances. Under no circumstance is picketing, etc., permitted in or near a courthouse, etc. Peaceful picketing is prohibited; there is no reasonable limitation of the number of pickets or size of signs; there is no reasonable limitation as to time of picketing, *i. e.*, whether in term or not, or whether during the normal business hours of the court or not. Apparently, the prohibition applies to civil as well as criminal sessions of court, or, for that matter, all state courts. The statute does not reasonably restrict the volume of sound nor the hours during which the sound device might be used. All demonstrations in or near the courthouse are prohibited without qualification. Thus one cannot reasonably conclude that R. S. 14:401 is a regulatory statute.

R. S. 14:401 prohibits the dissemination of social, economic and political doctrines in or near a state court, etc. In order to withstand a free-speech attack it must be justified under the only exception to the free-speech rule—the clear and present danger test.

The case of *Thomas v. Collins, 323 U. S. 516*, outlines the general considerations to be applied in the present case. It says:

"The case confronts us again with the duty our system places on this court to say where the individual's freedom ends and the state's power begins. Choice on that border now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great and indispensable democratic freedoms secured by the first amendment. . . . That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right not the limitation which determines what standard governs the choice . . .

"For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be worked, which in other contexts might support legislation against attack on due process grounds will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion at appropriate time and place must have clear support in public danger, actual or impending.

"Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore, in our tradition to

> allow the widest room for discussion, the narrowest range for its restriction particularly when this right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical are inseparable. They are cognate rights . . . and therefore are united in the First article's assurance . . ."

Mr. Justice Brandeis' concurring opinion in *Whitney v. California, 274 U. S. 357*, is more specific. It says:

> "Fear of serious injury cannot alone justify suppression of free speech and assembly . . . To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach enhances the probability. Expressions of approval add to the probability . . . Advocacy of lawbreaking heightens

> it still further. But even advocacy of violation however reprehensible morally, is not justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, . . . must be borne in mind. In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated."

An extract from a very important case gives us our starting point. That case is *Dennis v. U. S., 341 U. S. 494 (1951).* It said:

> "The rule we deduce . . . is that where an offense is specified by a statute in non-speech or non-press terms, a conviction relying upon speech or press as evidence of violation may be sustained only when the speech or publication created a 'clear and present danger' of accomplishing the prohibited crime. . . ."

The fact that defendant herein was convicted, and the fact that numerous other persons who advocate against segregation and discrimination have been arrested and convicted, is sufficient proof that the judges have not been influenced, nor has the administration of justice been interfered with. The following quotation from *Pennekamp v. Florida, 328 U. S. 331*, is pertinent:

> ". . . In this case too many fine drawn assumptions against the independence of judicial action must be made to call such a possibility a clear and present danger to justice. For this to follow, there must be a judge of less than ordinary fortitude . . . we conclude that the danger under this record to fair judicial administration has not the clearness and immediacy necessary to close the door of permissible public comment. When that door is closed, it closes all doors behind it."

At page 347, the decision says:

> "While a disclaimer of intention does not purge a contempt, we may at this point call attention to the sworn answer of petitioners that their purpose was not to influence the court. . . . For circumstances to create a clear and present danger to judicial administration, a solidity of evidence should be required which it would be difficult to find in this record. . . .
>
> ". . . Comment on pending cases may affect judges differently. It may influence some judges more than others. Some are of a more sensitive fiber than their colleagues. The law deals in generalities and external standards and cannot

> depend on the varying degrees of moral courage or stability in the face of criticism which individual judges may possess any more than it can depend on the personal equations or individual idiosyncracies of the tort feasor. . . . We are not willing to say under the circumstances of this case that these editorials are a clear and present danger to the fair administration of justice in Florida." (See also *Bridges v. California, 314 U. S. 252.)*

Finally, it is submitted that the Court must turn to the particular utterances and the circumstances surrounding defendant's arrest to determine to what extent the substantive evil of unfair administration of justice was a likely consequence. We further submit that nothing was said by defendant about any judge, the arraignment or trial of the persons arrested for picketing, nothing was said to indicate that the demonstrators would cross the street and storm the courthouse, no action was advocated that went beyond the realm of freedom of speech, no one was incited to riot, all that was said was directing the demonstrators away from the court and toward the downtown lunch counters, where the demonstrators were instructed to sit-in. Singing, praying and peaceful advocacy of integration does not amount to obstructing justice or influencing a judge.

IV.

The State Completely Failed to Prove Specific Intent.

Article 11 of the Criminal Code (L. S. A.-R. S. 14:11) provides:

> "The definitions of some crimes require a specific criminal intent, while in others no intent is required. Some crimes consist merely of criminal negligence that produces criminal consequences. However, in the absence of qualifying provisions, the terms intent and intentional have reference to general criminal intent."

The statutory definition of the crime of obstructing justice provides that:

> "Whoever, **with the intent of interfering with, obstructing and impeding the administration of justice** or **with the intent of influencing any Judge** . . . pickets, etc. . . ." (Emphasis ours.)

The emphasized provisions qualify the intent statutorily required to commit the crime defined. The statutory crime is thus not the intentional picketing or parading but rather picketing or parading with the intent of interfering, etc., with the administration of justice or picketing, etc., with the intent of influencing a judge, etc.

Specific criminal intent is defined by *Article 10 (1)* of our *Criminal Code (L. S. A.-R. S. 14:10 (1)):*

> "Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender **actively desired** the prescribed criminal consequence to follow his act or failure to act." (Emphasis ours.)

It is contradistinguished from general criminal intent, which exists "when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act. *Article 10 (2), Criminal Code (L. S. A.-R. S. 14:10 (2)).*

In short, specific intent is present when from the circumstances the offender must have subjectively desired the prohibited result; whereas general intent exists when from the circumstances the prohibited result may reasonably be expected to follow from the offender's voluntary act, irrespective of any subjective desire to have accomplished such result.

Applied to the present case, it was necessary for the state to prove that the defendant "actively desired" to interfere with, obstruct and impede the administration of justice and also "actively desired" to influence a judge, witnesses and court officers.

Where a specific intent is an element of a crime, **the specific intent must be proved as an independent fact** and cannot be presumed from the commission of the unlawful act. See *C. J. S., Criminal Law, Section 32, page 91*, and *Morissette v. United States, 342 U. S. 246, 72 S. Ct. 240, 96 L. Ed. 288; 1 Wharton's Criminal Evidence (12th Ed. 1955), Section 131, at page 244.*

The intent with which a harmful act is done is usually not expressed in words, and the jury is permitted to draw such inferences of intent as are warranted under all the circumstances of the particular case, but there is no presumption of law, either conclusive or disputable, that an act was done with any specific intent, unless some statute provides for such presumption in the trial of a particular offense. See *Perkins, Criminal Law (1957), page 674,* also see *State v. Daniels, 236 La. 998, 109 So. (2d) 896 (1959).*

A specific intent cannot be presumed from an unlawful act which does not naturally bespeak the intent. *Anderson, Wharton's Criminal Law and Procedure (1957), Section 60, pages 135-6.* As stated in a leading case on the subject, *Hubbard v. United States, 9 Cir., 1935, 79 F. (2d) 850, at page 853:*

> "The color of the act determines the complexion of the intent only in those situations where common experience has found a reliable correlation between a particular act and a corresponding intent."

The statement of the trial judge at page 548 of the transcript admits the 1,500 Negroes were protesting racial discrimination; the testimony of an attorney, a witness for the state, clearly shows defendant said he was protesting against some people being permitted to picket while Negroes were not; nothing in defendant Cox's speech shows that he intended to obstruct the administration of justice or influence a judge. (See Tr. pp. 272, 273 for a summary of defendant's speech given by a witness for the state); it's obvious that the demonstrators intended to go downtown to lunch counters and not to cross the street and storm the courthouse. In conclusion, there is a total absence of evidence as to the facts and circumstances surrounding the demonstration from which it might reasonably be inferred that such demonstration was committed with the specific criminal intent to interfere with, obstruct and impede the administration of justice and with the intent to influence a judge, witness and court officers in the discharge of their duty. There being a total absence of proof as to this essential element of the crime with which the defendant is charged, the conviction should be set aside.

V.

The Trial Court Applied the Wrong Standard of Guilt.

The trial judge in finding the defendant guilty of obstructing justice said at pages 540, 541 and 547 to 550 of the transcript:

". . . I want to dictate into the record exactly **all of my reasons for judgment** because much of the evidence adduced by both the prosecution and the defense was based on hearsay, but I, as the Judge of this court, am able to discriminate as to what is hearsay and what is not hearsay and what, in my opinion, is valid evidence. . . .

". . . I asked many questions of the accused and others such as Ronnie Moore as to just what did they propose to accomplish by congregating **on the other side of the courthouse**, on the street on the other side of the courthouse, singing these songs and protesting the 'illegal incarceration' of their fellow members. . . .

"The defense is that **they had no intent to influence anyone**, that this is just mere freedom of speech, that this is their right to protest out against anything which they happen to think is a social wrong and a social injustice. . . .

"Now what do people do when they come and parade in front of the courthouse? I was not a witness to the demonstration myself personally, but I was present in the courthouse shortly before it occurred. I was present in this courthouse when evidently the police had gotten notice that some demonstration was impending, and my reaction was to get away from it as fast as I could. If you asked me what I was afraid of, I can tell you best by saying that having lived here in the South all of my life and being present around a demonstration of some 1,500 colored people **who are protesting discrimination** and being a part of this community and living in this community where I know that especially of late that there is tension between the races, I felt that **it would be unpleasant** in some way or it would be some unpleasant thing to me to see; and because I know that **there is some tension** between the races, I think **I felt apprehensive** that trouble or violence could erupt from such a situation. That is what I felt in my heart and **that is why I left**, because I didn't want to be anywhere near or in connection with it. I can say that **it had influence on me**. I can say that it made me fearful. Perhaps a better word would be 'apprehensive,' that there might be some racial violence. I can say as a Judge that this is the way I felt. With all my heart I can say that. Then when I try to think of, if you want to protest, why protest around the courthouse; I get the feeling that **there is some subtle intimidation of me** or of anyone of us who is responsible for upholding the laws of the State of Louisiana and maintaining, according to certain of our laws, segregation.

". . . He knows that . . . if I would just say to everybody white and colored, 'Let's just all mix

> up together in the courthouse at the same time,' I think that it would be calculated to cause disorder in court . . . when he makes such a statement in the presence of a courtroom almost entirely filled with colored persons and knowing the situation as he does, **I think this is some intimidation of me.** The court gave half the section that was usually reserved for whites to the colored spectators in addition to the half they have customarily had, and he intimates that the court is being unfair by allowing this trial to go on in a segregated courtroom. Yes, **I feel that there is some intimidation of me**, especially when there are some 250 colored people standing in the halls outside waiting to get in and overcrowd this courtroom. When there is no place for them to sit if I gave them the whole courtroom.
>
> "In any event, I felt as a Judge the subtle intimidation. . . ." (Emphasis ours.)

Mere unpleasantness, tension, apprehension of violence, or a general subjective feeling of "subtle intimidation" on the part of a judge who was not present during the demonstration is not sufficient constitutional reason for denying defendant the right to protest against segregation. The very words of the judge in the above-quoted reasons for ruling admit that the 1,500 Negroes were "protesting against racial discrimination."

Finally, the trial Court did not indicate that the clear and present danger exception to the free-speech rule was applied at all, thus one is forced to conclude that the defendant was found guilty on the basis of the erroneous reasons given in the Court's reasons for ruling.

VI.

Racial Segregation in the Court Where Relator Was Tried and Convicted Denied Him of a Fair Trial in Violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

We submit that the Court must recognize that the equal protection cases of recent years indicate that it is no longer constitutional for states to require that members of different races use separate state facilities. Such practices for many years had been sustained under the separate but equal doctrine of *Plessy v. Ferguson, 163 U. S. 537 (1896).* However, beginning in 1954 with *Brown v. Bd. of Education, 347 U. S. 483 (1954),* and continuing in an unbroken line of decisions, the Court has held that state-imposed segregation is a violation of the equal protection of the laws as guaranteed by the Fourteenth Amendment. The school segregation cases held that in the field of public education the doctrine of separate but equal has no place as separate facilites are inherently unequal. In *Brown*, the Court noted an earlier case decided under the old doctrine which held that a Negro law school was unequal partly on the basis of "those qualities which are incapable of objective measurement but which make for greatness in a law school." *Sweatt v. Painter, 339 U. S. 629, 634 (1950).* The Court elaborated on this line of reasoning when it took judicial notice of modern psychological knowledge and concluded that state-imposed segregation on the basis of race generated a feeling of inferiority and was thus harmful to the petitioning Negro children. In the companion case to *Brown*, the Court held segregation in the public schools of the District of Columbia violated the due process of law protection of the Fifth Amendment and spelled out the general approach that it was to take in cases involving state-imposed segregation when it said:

> "Classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect." *Bolling v. Sharpe, 347 U. S. 497, 499 (1954).*

This line of reasoning which regards segregated facilities as inherently inferior has not been confined to the field of education. Since *Brown*, the Court has vacated judgment in a case involving segregation in a theatre and remanded the case "for consideration in light of the School Segregation Cases . . ." *Muir v. Louisville Park Theatrical Assn., 347 U. S. 971 (1954).* This "inferiority" *rationale* of *Brown* has led commentators to argue that all racial classification of state facilities is unconstitutional. See *Blaustein and Fer-*

guson, Desegregation and the Law (1957); McKay, Segregation and Public Recreation, 40 Va. L. Rev. 697 (1954).

The *rationale* that racial distinctions are inherently unequal, as contained in the *Brown* case, has been applied to other areas of state activity. In the field of public recreational facilities it is now law that segregated facilities, despite any physical equality, violate the equal protection of the laws. This issue was squarely faced when the Courts of Appeals reversed a district Court refusal to order integration of public beach facilities which had been grounded on the separate but equal doctrine. *Dawson v. Mayor and City Council, 220 F. (2d) 386 (4th Cir. 1955), rev'g 123 F. Supp. 193 (D. Md. 1954).* The intermediate Court based its decision on the theory that the *Brown* case had overruled the separate but equal doctrine and held:

> "It is now obvious, however, that segregation cannot be justified as a means to preserve the public peace merely because the tangible facilities furnished to one race are equal to those furnished to the other." *Id. at 387.*

The Court reasoned that the same inequality inherent in separate schools applied with equal force in the field of public recreation and that any separate public facilities are inherently unequal. The very fact of separation on the basis of race was deemed to be violative of the Fourteenth Amendment.

Faced with the two conflicting theories of constitutional law, the Supreme Court affirmed *per curiam* the Court of Appeals' holding of the unconstitutionality of the segregated facilities. *Dawson v. Mayor and City Council, 350 U. S. 877 (1955).*

When a federal district court sustained a Negro's petition for use of municipal golf courses applying the separate but equal doctrine of *Plessy*, the Supreme Court remanded with an order to modify the decree to make it conform to the principles enunciated in *Brown* and *Dawson*. *Holmes v. City of Atlanta, 350 U. S. 879 (1961)*, modifying *124 F. Supp. 290 (N. D. Ga. 1955).* The sequence of these cases clearly evidences that the Court is not willing to allow the use of the separate but equal *rationale* in place of the inherently unequal doctrine of *Brown* even when the same result would be obtained. Similarly, the required use by Negro voters of separate registration offices has been held to be a violation of equal protection under the Fourteenth Amendment. *Sharp v. Lucky, 252 F. (2d) 910 (5th Cir. 1958).* It clearly appears, therefore, that in cases closely analogous to the instant case it has been held unconstitutional for the state to provide separate facilities to members of different races. It is illogical to say that the same *rationale* should not be applied when the state requires its hall of justice to be segregated. When segregation in other public facilities is held to violate the principle of equal protection, only an irrational distinction could exclude public courtrooms from the scope of the Fourteenth Amendment.

It has also been held unconstitutional for the state to require segregation by race on public transportation facilities. In reversing a district court ruling denying jurisdiction in a suit for damages against a bus driver for making Negro plaintiff change his seat in conformity to the law on grounds that there was no diversity and a valid state statute, the Fourth Circuit construed the *Brown* decision as invalidating the separate but equal doctrine by implication in the field of public transportation. *Flemming v. South Carolina Elec. and Gas Co., 224 F. (2d) 752 (4th Cir. 1955), appeal dismissed, 351 U. S. 901 (1956).* A later suit for injunction and declaratory judgment produced the same result on the theory that *Flemming* "plainly and fully disposed . . ." of the substantive issue of the unconstitutionality of segregated transportation facilities. *Morrison v. Davis, 252 F. (2d) 102 (5th Cir.), cert. denied, 356 U. S. 968 (1958).*

The trend and meaning of the decisions seem clear. The state may no longer provide separate facilities to be segregated on the basis of race. The Court has held such racially separated facilities to be inherently unequal and thus violative of the Fourteenth Amendment. In the case at bar the state is attempting to do the same thing. Here the Court is attempting to segregate the races in a public courtroom. Certainly the facts here of racial segregation in the public facility of a state courtroom are no different than the segregation which has already been condemned in other public facilities. The *rationale* applicable to these other areas applies here with even greater force, since in the instant case the equal protection that is being denied occurs within the hall of justice itself. It strikes petitioners as incongruous that they may claim their right to ride on unsegregated transportation facilities, or to send their children to unsegregated schools, or to spend their time on unsegregated golf courses—but that they are denied the right to a trial free from a state-imposed barrier established in a courtroom.

We submit that the Court need hardly be reminded of the inscription which graces the structure housing the Supreme Court of the land. To deny petitioners their right to "equal justice under law" would indeed be anomalous when the federal courts have already acted to secure the equal protection of the laws under the Fourteenth Amendment to members of all races in other areas of public facilities.

The Supreme Court from *Strauder v. West Virginia, 100 U. S. 303 (1879)*, through *Cooper v. Aaron, 358 U. S. 1, 178 S. Ct. 1401, 3 L. Ed. (2d) 5*, and thereafter has recognized that segregation of the races imposes a status of inferiority upon Negroes. In the case at bar the segregation of the courtroom, under the *aegis* of the judiciary itself, was a continuing testimonial by the state that the two races were unequal. As was noted in *Brown v. Board of Education, 347 U. S. 483 (1954)*, the impact of segregation is greater when it is officially sanctioned by law. The *aura* of inferiority cast by the courtroom segregation is particularly suspect in a case like the instant case where the defendant and all defense witnesses are Negroes. The stigma is critical when the defendant is a militant civil rights leader and was at the time of his arrest speaking out against segregation.

The whole atmosphere of a courtroom and the procedure of a trial is designed to emphasize the necessity for laying aside personal convictions and to judge each case on its merits. The solemn, orderly and formal procedure followed in the courtroom, the respect paid to the robed judge, and the basic dignity conveyed by the entire proceeding all aspire to this goal. Yet this prospect is inevitably shattered once the court is segregated—a situation condoned, if not directed, by the judge upon whom laymen rely specifically for guidance. Certainly a segregated courtroom has neither the appearance nor substance of impartiality.

The relator herein was prejudiced by the refusal to desegregate the courtroom because the effect was to say you are not entitled, you have no right to have persons of your race sit where they choose in this court. If this be true, then how can it be said, especially in criminal cases, that your relator had all of his rights secured to him? How can it be said objectively that he received the benefit of the presumption of innocence; that the state proved beyond a reasonable doubt the guilt of the accused; that the statute in question was strictly construed; that the white persons who testified for the state were not given more credence than the Negroes who testified for the defense, and this simply because they were white? The answer is that there must exist a reasonable doubt that when the forms of justice are not met, then the substance of justice cannot be met, for the one precedes the other. The rights of any defendant are theoretically secured to him because of his dignity as a human being. If this dignity is besmirched by requiring his trial in a segregated courtroom, the denial of a lesser right, how can it be said truthfully that his greater rights were secured? This question becomes profound when the defendant was arrested while actively speaking out against racial segregation. Segregation in the courtroom cannot stand, because justice, like Caesar's wife, must be above suspicion.

It is the basic position of relator that segregation in any public facility is inherently unequal and in violation of the Fourteenth Amendment; thus, when exercised in a court of justice, is for a stronger reason violative of the Fourteenth Amendment. It is further the position of relator that the original *Brown* decision has been extended not only to mean that segregation in public school violates the equal protection clause of the

Fourteenth Amendment but to also mean that segregation in any public facility is a violation of due process. Thus appellant, in being forced to trial in a segregated courtroom, was denied a basic civil liberty amounting to deprivation of due process of law.

We maintain that the *Brown* case, *supra*, has been extended to mean that separate public facilities for Negroes are as a matter of law a violation of their constitutional rights. We further maintain that when a defendant is tried in a criminal case before a judge alone, and in a segregated courtroom, this, without more, as a matter of law denies a defendant of a fair and public trial and is a deprivation of defendant's rights under the Fourteenth Amendment to the Constitution. The gist of the *Brown* case, *supra*, says:

> ". . . we conclude that in the field of public education the doctrine of separate but equal has no place. Separate facilities are inherently unequal." (Emphasis ours.)

The *Brown* case, *supra*, has been extended by the United States district courts. In *Dorsey v. State Athletic Commission (1958)*, this was said:

> "In the School Segregation Cases, 1954, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873, the Supreme Court held that classification based on race is inherently discriminatory and violative of the equal protection clause of the Fourteenth Amendment. This principle, originally stated with re-

> spect to children in public schools, has been applied to golf courses, parks, beaches, and swimming pools, and buses and streetcars. The application of the principle does not depend purely upon the fact that the school or the park is publicly owned, it rests on the fact that the discriminatory classification is enforced by state officials or state agencies. The Supreme Court has consistently defined state action as including action of any agency of the state at any level of government."

Further on the case says:

> "The Commission relies on the argument that the rule and statute were adopted under the state police power as a necessary measure to preserve peace and good order . . . The same argument was made in Orleans Parish School Board v. Bush. Judge Tuttle for the Court of Appeals for the 5th Circuit, rendered the argument:
>
> > " 'The use of the term police power works no magic in itself. Undeniably the States retain an extremely broad police power, however, as everyone knows, is itself limited by the protective shield of the Federal Constitution.' "

The holding of the *Brown* case, *supra*, was elaborated in *Cooper v. Aaron, 358 U. S. 1, 178 S. Ct. 1401, 3 L. Ed. (2d) 5.* In the *Aaron* case the Court reiterated the proposition that segregated schools denied the student equal protection of the laws and also denied him due process of law. It is significant that in the *Cooper* case the School Board had filed a petition seeking a postponement of a plan for desegregation on the principal ground of extreme public hostility engendered largely by the official actions of the governor and the Legislature of the State of Arkansas. The Supreme Court held that the extreme situation which existed in Little Rock and the powerful and continued hostility of the governmental officials and/or ordinary citizens were not grounds for suspension of the Court's order. The Court said:

> "The right of a student not to be segregated on racial grounds in schools so maintained is indeed so fundamental and pervasive that it is embraced in the concept of due process of law."

Thus we see that the "separate but equal" doctrine of *Plessy v. Ferguson, 163 U. S. 537*, would now appear to have no vitality in the field of public transportation, the field in which the doctrine was originally announced. The *Brown* case and its history in the Supreme Court would appear to force the conclusion that there now exists a positive mandate that segregated public facilities are as a matter of fact unconstitutional by virtue of the due process and equal protection of the laws clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States. This is on the theory that segregated facilities are inherently unequal and that the forced use of them is such a deprivation of basic civil liberty that it amounts to a denial of due process of law.

The only serious arguments which have been advanced in recent years regarding the constitutionality of public segregation by statute or otherwise have in large measure had as their basis the exercise of the police power of the state to prevent public violence. This argument falls apart when one views the Court's reaction to the Little Rock violence as expressed in *Cooper v. Aaron, supra.* The Court says that violence or fear of violence are not proper factors to be considered in determining whether or not a given segregation statute or custom violates the Constitution. The Supreme Court is thus saying that individual liberty is more important than some abstract concept of public good.

The above argument is particularly strong in the light of the following statement by the trial judge at pages 5 and 6 of the transcript:

> "Also let the record show that it has been the practice and custom in the East Baton Rouge Parish Courthouse for many, many years and in the purpose of maintaining order in the courtroom separate portions are placed in the courtroom for both colored and white . . ."

VI.

A. The Possibility That Retroactive Effect Will Be Given to a New Ruling Should Not Deter the Court From Making the Ruling, for the Court May Provide That It Will Operate Only in Future Cases.

If it is thought that the ruling sought in this action would create a serious problem in its retroactive application to previously litigated cases, the Court may limit the operation of the decision to cases arising in the future. See *Great No. Ry. v. Sunburst Oil & Ref. Co., 287 U. S. 358 (1932); Durham v. United States, 214 F. (2d) 862, 874 (D. C. Cir. 1954).*

In the *Sunburst* case Justice Cardozo held that it was not a denial of due process for a state court to limit its overruling decision to future operation. He concluded that the courts were not under any legal restraint; that the question whether to apply a ruling retroactively or to limit it to future cases could be resolved in accordance with the juristic philosophies of judges in each jurisdiction.

In this absence of legal restraint the choice between retrospective prospective application is also available to the federal courts. *Cf. Warring v. Colpoys, 122 F. (2d) 642 (D. C. Cir.), cert. denied, 314 U. S. 678 (1941),* with *Farnsworth v. United States, 232 F. (2d) 59 (D. C. Cir. 1956).* The Court of Appeals for the District of Columbia, in adopting a new insanity test in the *Durham* case, expressly limited the application of the new test to future cases, saying:

> "(I)n adopting a new test, we invoke our inherent power to make the change prospectively." *214 F. (2d) at 874.*

Justice Frankfurter, concurring in the free transcript ruling of *Griffin v. Illinois, 351 U. S. 12, 25-26 (1956)*, feared that retroactive operation of the ruling would cause a flood of litigation and, therefore, proposed that the Court include an express disclaimer of retroactive effect in its opinion. Even though the majority did not disclaim the retroactive effect of the ruling, Justice Frankfurter nevertheless concurred in the result. Thus, the possibility of retroactive operation of the ruling, with its attendant difficulties, was not enough to induce Justice Frankfurter to oppose the new ruling.

It is submitted, therefore, that the possibility of retroactive effect need not deter the making of a constitutionally required ruling, for retroactivity may be disclaimed.

B. Segregation in the Courtroom Violated the Constitutionally Protected Rights of the Spectators, and Defendant Has Standing to Assert Those Rights.

It is a universal truth that individual and group predilections, prejudices and choices have existed and will continue. We do not complain of this *per se*. What we do complain of is the manifestation of majority prejudices through the use of the full panoply of state power. What we do seek is not a "gift" unwarranted and unmerited but a "right" due us from those in positions of trust, warranted and merited by the same reasons said rights are accorded members of the majority.

It is also a truth, not quite so universal, that segregation in the courts is not fair. No amount of legal rationalization, no matter how skillfully stated, will be sufficient to satisfy the mind of the most illiterate, insignificant individual that courtroom segregation is fair. The great strength of the Fourteenth Amendment is that it prohibits use of the evil eye and uneven hand. That unfairness exists and should be proscribed is not the question.

In 1868, with the ratification of the Fourteenth Amendment, it may be said at the very least that the gods conspired to create the circumstances resulting in the acknowledgment, be it ever so reluctant in some areas of unfairness to minorities. Nineteen hundred fifty-four brought a revitalization of the Fourteenth Amendment, a reacknowledgment of the necessity for enforcing its proscriptions and an answer to the question long pending, when should Fourteenth Amendment proscriptions be enforced?

Too much emphasis cannot be given to the Fourteenth Amendment and the jurisprudence developed under it. Early recognition of Negroes' rights and the nature it was to take was indicated by *Strauder v. West Virginia, 100 U. S. 303, 308 (1880)*, which said:

> "The very fact that colored people are . . . denied by statute all rights to participate in the administration of the law, as jurors, because of their color . . . is . . . a stimulant to that race prejudice which is an impediment to securing to individuals of that race, the equal justice which the law aims to secure to all others."

And at *100 U. S. 307-308:*

> "The words of the (Fourteenth) Amendment . . . contain a necessary implication of a . . . right, most valuable to the colored race . . . the right to exemption from . . . legal discrimination . . ."

Since 1879 the Supreme Court has condemned any state action which would subject Negroes to "legal discriminations implying inferiority in Civil Society." *Strauder v. West Virginia, 100 U. S. 303, 308 (1879).*

See also *Hirabayashi v. U. S., 320 U. S. 81, 100 (1943):*

> "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded on a doctrine of equality . . ."

See also *Takshashi v. Fish and Game Comm., 334 U. S. 100 (1948).*

The *Strauder* case evidences a concern by the U. S. Supreme Court about insuring judicial administration which preserves to parties before the court the equal protection of the laws.

This the *Strauder* case shows by the fact that it did not require evidence of actual prejudice against defendant. Only a *prima facie* showing of discrimination in the selection of the jury list was required. The line of cases since *Strauder* have maintained the same requirement. These cases, on the basis of circumstantial evidence, have found denial of equal protection; *a fortiori*, a denial will similarly be found, whereas here there was a denial of a motion to desegregate the courtroom.

Avery v. Georgia, 345 U. S. 559 (1953), is an example of the close supervision the U. S. Supreme Court will exercise in reviewing the process of judicial administration of a state tribunal. There different colored slips were made out for the Negro veniremen, and the judge who selected the jurymen gave uncontradicted testimony that he had never practiced discrimination in the discharge of his duty. The Court held that the absence of Negro jurymen on the panel constituted sufficient evidence to make out a *prima facie* case of discrimination. The Court noted:

> "(O)bviously that practice makes it easier for those to discriminate who are of a mind to discriminate." *345 U. S. at 562.*

The Court's concern with equal protection in grand jury cases is no different. See *Carter v. Texas, 177 U. S. 442; Eubanks v. Louisiana, 356 U. S. 584; Cassell v. Texas, 339 U. S. 282.* As Justice Jackson pointed out in his dissent in *Cassell*, what the Court was concerned with was not the prejudice that might result to the defendant but with the judicial administration of the state court, with a "method of enforcing the right of qualified Negroes to serve on grand juries." *339 U. S. at 300.* As the Court in *Hill v. Texas, 316 U. S. 400,* noted:

> "No state is at liberty to impose upon one charged with crime a discrimination in its trial procedure which the Constitution, and an Act of Congress alike forbids."

The *rationale* of close supervision of state court proceedings is also evidenced by the federal review of actions brought to enforce restrictive covenants. See *Shelly v. Kraemer, 334 U. S. 1 (1948).* In *Barrows v. Jackson, 346 U. S. 249 (1952)*, the action was at law, and the relief prayed for was damages for breach of the restrictive covenant by a white vendor. The Court held that the judicial enforcement which violated the equal protection of the laws in a court of equity applied as well when an action on the covenant was prosecuted in a law court. The Court said:

> "The result of the Sanction by the State would be to encourage the use of the restrictive covenants . . ." *Id. at 254.*

That *rationale* is equally applicable here.

To the argument that the instant case was a misdemeanor, triable by the judge alone, therefore there is a presumption that the trial was fair, we urge that this presumption is a rebuttable one that was overcome by the fact that the Court demonstrated its inability to conduct a fair trial by its failure to grant the motion to desegregate the courtroom.

C. Relator Has Standing to Assert the Denial of Rights to Others.

Relator, while not being a spectator *per se*, has standing to assert the rights of other spectators. One group of cases indicated that there is standing if there is sufficient *nexus*, or identity between the party whose right is being asserted and the party who is before the court. In *N.A.A.C.P. v. Alabama, 357 U. S. 449 (1958)*, the association was held to have standing to assert the rights of its members, rights of freedom of speech and of assembly. The Court said:

> "We think that petitioner argues more appropriately the rights of the members, and that its nexus with them is sufficient to permit that it act as their representative before this court . . . We reject respondent's argument that the association lacks standing to assert here constitutional

> rights pertaining to the members, who are not of course parties to the litigation." *Id. at 458-59.*

The Court also said:

> "Petitioner is the appropriate party to assert these rights, because it and its members are in every practical sense identical."

It may be wryly suggested that one reason segregation is so easily enforced is because of the racial characteristics involved, thus in a very real sense relator cannot be said to be urging a purely personal right. More properly he is urging a right common to all those subject to the same vice by reason of the same racial characteristics. One need not fully rely on the denial of a *nexus* sufficiently close. Skin color is not a *nexus*.

However, should the cause of the vice, skin color, be not sufficient, witness what *Brewer v. Hoxie School District, 238 F. (2d) 91 (8th Cir. 1956)*, says about the identity of interests necessary:

> "The School board having the duty to afford the children the equal protection of the law has the correlative right, as has been pointed out, to protection in performance of its function. Its right is thus intimately identified with the right of the children themselves. The right does not arise solely from the interest of the parties concerned, but from the necessity of the government itself. Cf. Ex Parte Yarbrough 110 U. S. 651

> (1884). Though, generally speaking, the right to equal protection is a personal right of an individual, this is 'only a rule of practice,' Barrow v. Jackson, 346 U. S. 249 (1952), which will not be followed where the identity of interest between the party asserting the right and the party in whose favor the right directly exists is sufficiently close." *Id. at 104.*

Accord, *Pierce v. Society of Sisters, 268 U. S. 510* (1925) (parochial school asserting rights of parents and children), and *Traux v. Raich, 239 U. S. 33 (1915)* (employee asserting employer's right).

This same group of cases allowing standing on the basis of proximity of interest includes the grand jury cases where exclusion of Negroes as a class provides Negro defendants with standing to object to the exclusion of a class of which he is a member; *e. g., Cassell v. Texas, 339 U. S. 282 (1950).*

Other cases indicate that a petitioner may even assert the rights of parties not before the Court, even if there is no real identity of interest connecting the present and absent parties. *Barrow v. Jackson, 346 U. S. 249 (1952)*, allowed a white co-covenantor of a restrictive covenant to assert the rights of Negro purchasers. The Court said:

> "Under the peculiar circumstances of this case, we believe the reasons which underlie our rule denying standing to raise another's rights, which is only a rule of practice, are outweighed by the need to protect the fundamental rights which would be denied by permitting the damage action to be maintained." *Id. at 257.*

The Court added that the petitioner "will be permitted to protect herself, and, by so doing, close the gap to the use of this covenant, so universally condemned by the courts." *Id. at 257.*

Segregation through the use of state coercive powers has been universally condemned by the courts. We respectfully submit that by permitting relator to assert the constitutional rights of spectators another gap will be closed on unconstitutional practices with reference to minority groups.

CONCLUSION.

WHEREFORE, it is respectfully submitted that the trial Court committed prejudicial error in each of the rulings complained of in Bills of Exception Numbers 1 through 4, inclusive, and it is prayed that the verdict and sentence rendered herein be set aside, annulled and vacated, and the defendant discharged, or in the alternative be granted a new trial, and for all appropriate and equitable relief.

Respectfully submitted,

ROBERT F. COLLINS.
NILS R. DOUGLAS,
LOLIS E. ELIE,
MURPHY W. BELL,
Attorneys for Appellant-Relator.

Of Counsel:
CARL RACHLIN,
280 Broadway, N. Y., N. Y.;
F. B. McKISSICK,
213½ W. Main Street,
Durham, N. C.

CERTIFICATE OF SERVICE.

I, NILS R. DOUGLAS, member of the bar of the State of Louisiana, hereby certify that a copy of this original brief on behalf of defendant-appellant, B. ELTON COX, has beeen mailed by United States mail, postage prepaid, to the District Attorney for the Parish of East Baton Rouge, State of Louisiana, namely, Sargent Pitcher, Jr., Parish Courthouse, Parish of East Baton Rouge, Louisiana.

NILS R. DOUGLAS

UNIFORM TRAFFIC TICKET AND COMPLAINT

CASE No. C DOCKET No. AI PAGE No.

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE } SS. **No.** 18879
CITY OF BATON ROUGE

SUMMONS

IN THE MUNICIPAL COURT OF CITY OF BATON ROUGE

You are hereby Summoned to appear personally before this court to answer for the following offense:

ON SUN. THE 25th DAY OF April 1965, AT 7:00 A.M. P.M.

NAME Daniel Ernest Paik
FIRST (PLEASE PRINT) INITIAL LAST

STREET 1005 W. Hadley St.

CITY - STATE Whittier, Calif.

AGE 20 BIRTH DATE 6.13.44 RACE W SEX M HT. 5' WT. 154

DRIV. LIC. No. J. 889516 LA.

VEH. LIC. No. 831A098 KIND NUMBER STATE Cal YR. 64 65

MAKE Plymouth STYLE 4 door COLOR W

UPON A PUBLIC HIGHWAY, NAMELY AT (LOCATION) Napoleon & E. Washington

DID UNLAWFULLY (PARK) (OPERATE) IN THE CITY, VILLAGE, TOWNSHIP, PARISH AND STATE AFORESAID AND DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE:

Leading Causes of Accidents

SPEEDING (over limit) ☐ 5-10 m.p.h. ☐ 11-15 m.p.h. ☐ over 15 m.p.h.
(m.p.h. in m.p.h. zone)

Improper LEFT TURN ☐ No signal ☐ Cut corner ☐ From wrong lane

Improper RIGHT TURN ☐ No signal ☐ Into wrong lane ☐ From wrong lane

Disobeyed TRAFFIC SIGNAL (When light turned red) ☐ Past middle intersection ☐ Middle of intersection ☐ Not reached intersection

Disobeyed STOP SIGN ☐ Wrong place ☐ Walk speed ☐ Faster

Improper PASSING AND LANE USAGE ☐ At intersection ☐ Between Traffic ☐ Lane Straddling ☐ Cut-in ☐ On right ☐ Wrong lane ☐ Wrong side of pavement ☐ On hill ☐ On curve

☐ Following too closely ☐ Failure to yield

Other Violations:

In Violation of Section: Sec-103

Fail to yield of

☐ State Statute ☒ Local Ordinance in such case made and provided.

PARKING:
Meter No. ☐ Overtime Prohibited ☐ Area Double ☐ Parking Expired ☐ Meter
(Describe) Other
☐ parking violation

Conditions that Increased Seriousness of Violation

SLIPPERY PAVEMENT ☐ Rain ☐ Snow ☐ Ice

DARKNESS ☐ Night ☐ Fog ☐ Snow

OTHER TRAFFIC PRESENT ☒ Cross ☐ Oncoming ☐ Pedestrain ☐ Same Direction

CAUSED PERSON TO DODGE ☐ Pedestrian ☐ Driver ☐ JUST-MISSED ACCIDENT

TYPE ACCIDENT: PD ☐ PI ☒ FATAL ☐
☐ Ped. ☐ Vehicle
☐ Hit Fixed Object
☒ Right Angle
☐ Head on
☐ Sideswipe
☐ Rear end
☐ Ran off Roadway
☐ Intersection

AREA: ☐ Business ☐ Industrial ☐ School ☒ Residential ☐ Rural

HIGHWAY TYPE: ☒ 2 lane ☐ 3 lane ☐ 4 lane ☐ 4 lane divided

YOU ARE NOTIFIED THAT THE OFFICER WHOSE SIGNATURE APPEARS BELOW WILL FILE A SWORN COMPLAINT IN THIS COURT CHARGING YOU WITH THE OFFENSE SET FORTH ABOVE.

M Bergeron
(Signature and Identification of officer)

NOTICE TO VIOLATOR: READ BACK OF THIS SUMMONS CAREFULLY, BRING SUMMONS WITH YOU.

COURT APPEARANCE: 13th DAY OF May, 1965, AT 2:30 P.M.,

ADDRESS OF COURT 300 N. BLVD.

I PROMISE TO APPEAR IN SAID COURT OR BUREAU AT SAID TIME AND PLACE.

SIGNATURE

NAME Last First Middle

18879

ATE OF LOUISIANA
OF EAST BATON ROUGE
CITY OF BATON ROUGE

File No. 4661

NAME Walter Leon Jenkins

ADDRESS Houston Texas

You are hereby summoned in the name of the City of Baton Rouge to appear in Division A, of the City Court, City of Baton Rouge, East Baton Rouge Parish, State of Louisiana, on 18th Mar, 1963, at 1000 AM o'clock.

Herein fail not under the penalty of the law.

By order of the Court this 13th day of Mar, 1963.

Desk/Sergeant D - Stephens

ACKNOWLEDGEMENT OF RECEIPT:

/s/ Walter L. Jenkins

Remarks -

HG
Last
First
Middle

NOTICE OF TRIAL

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

CLERK'S OFFICE

To B. ELTON COX
1201 DAY STREET, HIGH POINT, NORTH CAROLINA

YOU are hereby commanded to appear in the Nineteenth Judicial District Court, holden in and for the Parish of East Baton Rouge, on the 30th day of JUNE 1965, at 10:00 o'clock A.M., for trial in a certain case wherein the State of Louisiana is Plaintiff, and you are Defendant.

And, therefore, fail not under penalty of the law.

No. 42,201
STATE OF LOUISIANA
vs.
B. ELTON COX
CC: Murphy W. Bell
Nils Douglas

By order of said Court, this June 9, 1965
day of 19.
Katleen O French
Deputy Clerk.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

STATE OF LOUISIANA CRIMINAL

vs.

B. ELTON COX NO. 1598

* * * * * * * * *

REQUEST FOR ADMISSIONS
AND PRODUCTION OF DOCUMENTS

Pursuant to The Rules of the Federal Rules of Civil Procedure, your mover requests that District Attorney Sargent Pitcher Jr. be required to admit the following:

1. That he made the statement attributed to him by the Wednesday morning May 5, 1965 edition of the Baton Rouge Morning Advocate Newspaper at pages 1 and 4A column 1, namely:

> "District Attorney Sargent Pitcher said he will amend the bill of information to charge Cox with attempting to impede justice by demonstrating near a courthouse."

Your mover requests that he be furnished with a certified copy of the bill of information as he intends to amend it i.e. the bill of information upon which your mover will be tried, not a bill of information which will be later amended to charge some other offense.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: __________________________

Murphy Bell
971 South 13Th Street
Baton Rouge, Louisiana

mail to
marvin Rich
Core S.C.D.F. fund.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

STATE OF LOUISIANA * CRIMINAL
VS. *
B. ELTON COX *

* *

REMOVAL PETITION

I.

1. Petitioner is Rev. B. Elton Cox, a Negro citizen of the United States and of the State of North Carolina. He holds membership in the Congress of Racial Equality and is a Field Secretary for same. His organization is an association of persons engaged in seeking, by lawful and peaceful means, the equal civic rights of Negroes and all persons in the United States.

2. As a result of the activities of defendant on December 15, 1961 as leader of a demonstration of some 2,000 Negro students opposite the courthouse in East Baton Rouge Parish he was charged with:

    1.) Criminal conspiracy L.S.A-R.S. 14:26
    2.) Obstructing the sidewalk L.S.A-R.S. 14:100.1
    3.) Obstructing justice L.S.A-R.S. 14:401
    4.) Disturbing the peace L.S.A-R.S. 14:103.1

    Defendant was acquitted of the criminal conspiracy charge but was found guilty and immediately sentenced on the other 3 charges. Review by the State Supreme Court proved that petitioner had been illegally sentenced whereupon the error was cured and a second review by the State Supreme Court on June 28, 1963 in case number 46396 affirmed the obstructing justice conviction. On November 12, 1963 the State Supreme Court affirmed petitioners convictions of disturbing the peace and obstructing the sidewalk in case number 46618. These 3 convictions were reviewed by the United States Supreme Court during the October term 1964, in cases numbered 24 and 49 and all three convictions were reversed on January 18, 1965 in an opinion for the majority by Mr. Justice Goldberg. A copy of the mandate of the United States Supreme Court in case number 49 of the October 1964 term is attached hereto and made a part hereof as is the copy of the mandate in case number 24.

3. Undersigned counsel received by mail in New Orleans what purports to be service on B. Elton Cox. Said purported subpoena, dated March 2, 1965, was addressed to B. Elton Cox and is attached hereto and made a part hereof. This document states that in case number 42-201, the same number as the obstructing justice charge in East Baton Rouge Parish is set for trial on May 7, 1965.

4. Petitioner has received notice at his domicile in High Point, North Carolina of a forth coming trial. It is petitioners position that as far as the charges for violations of L.S.A-R.S. 14:26, 14:100.1, 14:401 and 14:103.1 in East Baton Rouge Parish are concerned that he has been absolved from all criminal responsibility. It is further petitioners position that he has not been legally served with notice of this forthcomming trial.

5. Neither petitioner nor his counsel have received a copy of the indictment or information against him. It was reported in the Wednesday morning, May 5, 1965 edition of the Baton Rouge Morning Advocate Newspaper at pages 1 and 4A column 1 that:

> "Dist. Atty. Sargent Pitcher said he will amend the bill of information to charge Cox with attempting to impede justice by demonstrating near a Courthouse."

A copy of this newspaper is attached hereto and made a part hereof.

6. Petitioner believes and so believing avers that he has a constitutional right under the Sixth and Fourteenth Amendment of the United States Constitution to be informed in advance of appearance of the nature and cause of the accusation against him.

7. It is petitioners position that since his conviction for violation of L.S.A- R.S. 14:401 has been reversed any further prosecution for the same or a lesser included offense is a violation of rights guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution.

8. Petitioner believes and so believing avers that the State of Louisiana will urge as authority for prosecuting petitioner the mandate of the United States Supreme Court in case number 24 of the October term 1964. This mandate is palpably insufficient in law to justify continuing jurisdiction over the person of petitioner because:

1.) It is directed to the State Supreme Court.
2.) It is not directed to the trial Court.
3.) Its purpose is to award costs to petitioner.
4.) It orders further proceedings not inconsistent. with the U.S. Supreme Courts opinion.

Further, the decision of the U.S. Supreme Court in case number 24 was on the merits of the case therefore the reversal is of the information, conviction, and sentence of the trial court and of the affirmance by the Louisiana State Supreme Court. Thus the forthcomming prosecution does not fall within the rule that a mere reversal does not prevent the state under some circumstances from prosecuting anew on the same information.

9. This being the case the State of Louisiana does not have jurisdiction over the subject matter of the same offense involving the same facts and the same defendant. The decision of the United States Supreme Court, in case number 24 of the docket of the October term 1964 is res judicata of the apprehended charge.

10. Further any prosecution by the State of Louisiana against the defendant for violation of any crime growing out of the December 15, 1961 incident has prescribed.

11. Petitioner alleges that he was charged and convicted in East Baton Rouge Parish in cases numbered 44287 and 44288 with defamation respectively of Judge Fred A. Blanche Jr. and the District Attorney herein Sargent Pitcher Jr.. In these cases there was a co-defendant Rev. Arthur Jelks. Jelks was granted a severance and his case has never been brought to trial. Petitioners defamation conviction was appealed to the State Supreme Court where the conviction and sentence were annulled and remanded for a new trial. The charges were subsequently

dropped. The reason the State Supreme Court (case number 47018) set aside the conviction was because the District Attorney combined both cases for trial, tried all the preliminary motions and recused himself in the case charging defamation of himself as District Attorney only after so trying. the preliminary motions.

12. Petitioner believes and so believing alleges that the criminal charge attempted to be brought against petitioner herein are not authorized by law and not being authorized is FOR the sole purpose and effect of harrassing petitioner and of punishing him for his integrationist views. It is further alleged that the district attorney is a ~~charity~~ CHARTER member of the citizens council of the State of Louisiana an organisation dedicated to maintaining the Negro in the status quo. petitioner alleges that ostensibly he is being prosecuted for some crime growing out of the December 15, 1961 activities but the real reason is because he is a Negro integrationist. As proof that the prosecuting process is used as means of punishment the following are civil rights cases inwwhich charges have been brought but never tried:

1. State Vs. Weldon Rougeau
2. State Vs. Charles McDew
3. State Vs. Robert Zellney
4. State Vs. Ronnie Moore
5. State Vs. Arthur Jelks
6. State Vs. Joan Trumpower

II.

13. The acts for which petitioner is being held to answer for the offense as charged, are, insofar as the offense charged has any basis in fact, acts in the constitutionally protected exercise of petitioner's right of freedom of speech, assembly, and petition guaranteed by U.S. Constitutional Amendments I, XIV and 42 U.S.C. Sec. 1983 (1958), which acts are also in the exercise of petitioner's privileges and immunities as a citizen of the United States guarnateed by U.S. Constitutional Amendments, XIV, XV, and 42 U.S.C. sec. 1985 (1958), and 42 U.S.C., Sec. 1971 (1958) to disseminate information concerning the means of registration for voting in federal elections, and information concerning the federal rights of

of Negroes to vote in all elections with out abridgement by reasons of race, and to urge Negroes having the qualifications of voters to register for voting in all such elections. Conviction of petitioner on the charge against him, has, and will punish him for the exercise of rights, privileges and immunities secured him by the federal constitution and laws, and has, and will deter him and others similarly situated from the future exercise of these rights, privileges and immunities, for if the Louisiana Statute under which he is prosecuted makes petitioner's conduct criminal, then it is unconstitutional as applied, whereas if the statutes are construed so as to save their constitutionality under the federal constitution, there is no evidence upon which petitioner may be convicted, consistent with the due process of law required by the Fourteenth Amendment.

14. The arrest and prosecution of petitioner, B. Elton Cox, has been and is being carried on with the sole purpose and effect of harrassing petitioner and of punishing him for, and deterring him from exercising his constitutionally protected rights of free speech and assembly to protest the conditions of racial discrimination which the State of Louisiana now maintains by statute, ordinance, regulation, custom, usuage, force and practice, and to urge Negroes, the victim of this discrimination, to register for voting in federalaand state elections, free of racial discrimination. The harassment of petitioner is pursuant to a policy of racial discrimination which is now encouraged, followed and enforced by legislation, and by action of the executive and Judicial branches, of the State of Louisiana.

III.

15. By reason of the foregoing, petitioner is being prosecuted for acts done under color of authority derived from the federal constitution and laws providing for equal rights, that is, United States Const. Amends. I, XIV, XV; 42 U.S.C., sec. 1971, 1983, 1985 (1958), and for refusing to do acts on the ground that they would be inconsistent with the constitution and laws cited. Also by reason of the allegations

of paragraphs 1 to 14 above and more particularly of paragraph 16 below. Petitioner has been denied, is being denied, and cannot enforce int the Courts of the State of Louisiana rights under the cited federal constitutional and statutory sections providing for the equal rights of citizens of the United States and of all persons within the jurisdiction of the United States.

IV.

16. Petitioner is unable to enforce his federal rights in the state courts of Louisiana and particularly in the19th Judicial District Court, because those courts are hostile to petitioner by reason of race and his civil rights' activity and by reason of the commitment of those courts to enforce Louisiana's policy of racial discrimination. In the District Court for East Baton Rouge Parish where Petitioner will be tried:

(a) District Court Judges are elected for terms of four years at elections at which Negroes have been systematically denied the right to vote by reason of race in violation of the Fifteenth Amendment.

(b) Negroes are systematically excluded from the juries by reason of race.

(c) Criminal defendants charged with offenses arising out of demonstrations and other exercise of their equal civil rights have usually been held to anser under excessive and exorbitant bail and if convicted maximum imposition of sentence is imposed.

(d) Negro defendants, Negro witnesses and Negro attorneys are addressed by their first names, as a mark of contempt and racial discrimination in violation of the Equal Protection Clause.

(e) The Court sits in a community which is hostile to and inflamed against Negroes and, in particular, hostile to and inflamed against persons like petitioner who actively exercise his federal constitutional rights by working in a lawful and peaceful manner to achieve the equal rights of Negroes and of all persons within the State of Louisiana and the United States.

WHEREFORE, petitioner prays that this criminal proceeding be removed from the 19th Judicial District Court for East Baton Rouge, Louisiana, for trial pursuant to 28 U.S.C. sec. 1443 (1958) since the proceedings removed are criminal, no bonds or filing fees are required with this petition.

(b) That the Court grant petitioner such other relief from time to time as to it may appear just and reasonable for the protection of petitioner's rights herein.

By Attorneys:

ROBERT F. COLLINS

NILS R. DOUGLAS

LOLIS E. ELIE

2211 DRYADES STREET
NEW ORLEANS, LA.
523-5197

BY: ____________________
MURPHY W. BELL
971 South 13th St.
Baton Rouge La.
DI8-3572

VERIFICATION

I, Nils R. Douglas, of lawful age, first being duly sworn upon oath, depose and say:

That I am a member of the bar of Louisiana and of the U.S. District Court for the Eastern District of Louisiana.

That I am the duly authorizeda attorney for petitioner herein, authorized to prepare and verify the annexed petition;

That I have read the annexed petition and know the contents thereof;

That I know of my personal knowledge that all facts stated therein are true except such as are stated on information and belief;

That as to subject matter I believe the petition to be true; and

That I sign this verification on behalf of the petitioner, because the annexed petition deals chiefly with matters of law and legal inference to be drawn from facts allegeda and/or of which I as an attorney have more knowledge than the petitioner.

____
NILS R. DOUGLAS

Sworn to and subscribed to before me

this 6th day of May, 1965.

____
NOTARY PUBLIC

IN THE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

STATE OF LOUISIANA *

vs. * CRIMINAL NO.________

B. ELTON COX *

* *

NOTICE OF APPEAL

The defendant named in the above-numbered removed criminal case hereby appeal to the United States Court of Appeals for the Fifth Circuit from the order of this Court, Honorable E. Gordon West, Judge, on May 24, 1965, remanding this cause to the Twentieth Judicial District Court in and for the Parish of West Feliciana, State of Louisiana.

COLLINS, DOUGLAS & ELIE
2211 Dryades St.
New Orleans, La.

By:____________________
MURPHY W. BELL
971 So. 13th St.
Baton Rouge, La.

May 26, 1965

IN THE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

STATE OF LOUISIANA *

vs. * CRIMINAL NO.______

B. ELTON COX *

* *

APPLICATION FOR STAY

The defendant named in the above numbered removed crimina case hereby apply to this Court for a "stay" pending appellate review of the herein ordered remand of this case to the State Court.

COLLINS, DOUGLAS & ELIE
2211 Dryades St.
New Orleans, La.

BY: Murphy W. Bell
MURPHY W. BELL
971 So. 13th St.
Baton Rouge, La.

June 1,
~~May 26~~, 1965

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority appeared:

MURPHY W. BELL,

Who, after being duly sworn did depose and say that he is one of the attorneys for the Rev. B. Elton Cox who heresfore having been charged in Bill of Information Number 42,201 in the Nineteenth Judicial District Court of Louisiana.

That on numerous occasions he has attempted without success to obtain a copy of the proposed amended Bill of Information that District Attorney Sargent Pitcher announced in the News Media on which Cox is scheduled to be tried.

That affiant discussed the matter with Mr. Ralph Roy of the District Attorney's office, but could obtain no information on the proposed amended bill.

That on June 1, 1965, immediately after this matter was remanded back to the 19th Judicial District Court for trial your deponent appeared before the Honorable Fred S. LeBlanc Judge of the Criminal Section during this term, and moved the Court on the following points:

a) That defense attorneys for Cox be allowed to see the "amended" Bill in order that they may have time to properly prepare for the forthcoming trial.

b) That if any motions or other moves be made in this matter, State v. Cox, # 42,201, including a motion by the District Attorney setting this matter for trial, that defense Counsel be given adequate notice, in order that they may file any oppositiont that may be indicated.

c) That all of the foregoing motion and statements be made part of the official minutes and records in State v. Cox, No. 42,201.

That the trial Judge, The Honorable Fred S. LeBlanc, summarily overruled the motion, even though the Assistant District Attorney, a Mr. Wilson Davis offered no objection. The Honorable District Judge then ordered all of the motions statements and rulings stricken from the record in this matter.

That your deponent excepted to the Court's ruling reserving a Formal Bill of Exception, making the oral motion, of Counsel for Defense, the rulings of the Court and the stricken record thereof part of a formal bill reserved.

That defense counsel later and without notice received an ex parte order setting this matter down for trial on the last day of the term.

Signed: Murphy W. Bell

Murphy W. Bell

Sworn to and subscirbed before me, this 25th day of June, 1965

Mildred Byrd

NOTARY PUBLIC

Note: This affidavit was filed in Cox v. Pitcher, heard before

DODD, HIRSCH, BARKER, AVANT & WALL
LAW OFFICES
BATON ROUGE & NEW ORLEANS, LA.

WILLIAM J. DODD
AUBREY B. HIRSCH (1913-1960)
JOHN L. AVANT
ALEX WALL
JAMES D. THOMAS II

C. PAUL BARKER
THOMAS J. MEUNIER
HAROLD J. LAMY
WILFRED H. BOUDREAUX

429 GOVERNMENT STREET
P. O. BOX 967 PHONE DI 8-1401
BATON ROUGE, LA.

June 23, 1965

Mr. Murphy W. Bell
Attorney At Law
971 South 13th Street
Baton Rouge, Louisiana

Re: Civil Action No. 3221
B. Elton Cox vs.
Sargent Pitcher, Jr., Esq.
District Attorney for the
19th Judicial District

Dear ~~Mr. Bell~~ Murphy:

Enclosed please find copies of notice of motion, motion for summary judgment and motion to dismiss which we are this date filing in the above captioned matter.

Very truly yours,

DODD, HIRSCH, BARKER, AVANT & WALL

John L. Avant

John L. Avant

JLA:ff
encls.

P.S. Also enclosed is respondents' answer
JLA

SEEK TO 'MIX' BR COURTHOUSE

Motions Filed by Lawyers for Negro Integration Leaders

A motion seeking desegregation of the East Baton Rouge Parish Courthouse was filed here Friday by an attorney for Rev. B. Elton Cox, High Point, N.C., Congress of Racial Equality field secretary.

Cox and Rev. Arthur L. Jelks, local NAACP leader, are charged in separate cases with defaming Dist. Atty. Sargent Pitcher and Dist. Judge Fred A. Blanche Jr. in remarks made at a public meeting of the Baton Rouge chapter of the NAACP in early September.

Four other motions were filed by Nils Douglas, counsel for Cox.

The motion to desegregate the courthouse cites a list of Louisiana laws requiring segregation in specific places. The motion contends no state law has been passed to require segregation in courthouses. It claims that segregation in the East Baton Rouge Parish courthouse exists only by "custom."

The motion asks for desegregation of the entire courthouse, including the courtroom, all restrooms, water fountains and lunchroom facilities. In the alternative, he asks that the bill of information in the case be quashed.

(Continued on Page 5-A, Col. 4)

SEEK TO 'MIX'

Another motion requests that Dist. Atty. Pitcher be recused as district attorney in the case since he has a "personal interest" in the matter.

A third motion asks for a change of venue, alleging that local citizens and elected and appointed officials have become so "incensed" in the case it would not be possible to secure a fair and impartial trial for Cox.

Other motions include a motion to quash and a fifth one for a bill of particulars in the amended bill of information in the case.

On Nov. 10, Dist. Judge Fred S. LeBlanc gave attorneys for Cox until Nov. 19 to file pleadings in connection with amendments to two of the bills of information in the case. The amendments were submitted by Asst. Dist. Atty. Ralph Roy at that time.

"State Time"
Baton Rouge
Nov. 17, 1962

[illegible] Merchants

[illegible]

[illegible] Moore, chairman of the CORE unit here and a Southern University student, said registered letters were sent to the merchants after several attempts to negotiate by telephone failed.

"Most of the managers happened to be out of town, some were too busy, and others didn't have time to discuss the significance of racial equality," Moore [illegible].

[illegible] also pointed out the [illegible] Christmas season," he said. "[illegible] Christmas is a [illegible] for both buyers and sellers."

[illegible] letters, he said, [illegible] Goudchaux's, [illegible] Co., [illegible] and [illegible] Sears, Holmes [illegible] Penney's [illegible]

Moore declined to say immediately what would happen if the [illegible] reply to the group's attempts to negotiate on equality in employment and desegregation were not answered.

[illegible] direct non-violent action clinic at St. Mark Methodist Church at N. 14th and Convention Streets here was expected to draw about [illegible] persons.

Those attending, he said, would be students of Southern University interested in the activities of CORE in the area.

The clinic will begin at [illegible] p.m. Friday. Sessions will be held until 10 p.m. Friday. They will resume at 9 a.m. Saturday and continue until [illegible] p.m.

Officers of CORE from New Orleans and Shreveport will serve as consultants, Moore said.

[illegible] will serve as an institute for the training of students and CORE members in the Baton Rouge area [illegible] non-violent [illegible] discrimination.

[illegible] will be instruction [illegible] picketing [illegible]

[illegible] was the only [illegible] order was [illegible] Judge [illegible] forbids the [illegible] breaches of the peace in or near the terminal.

The former Southern University student said she resigned from the university several weeks ago so that her scholastic work would not be affected by possible action from the state board of education because of her participation in [illegible] activities.

FILED IN EVIDENCE

Exhibit State - 7

Date Jan. 30, 196[illegible]

Deputy Clerk

[illegible] Leader [illegible] Church [illegible] Join-In [illegible]

1-4-[illegible] ST[illegible]

NEW [illegible] ANS (AP) [illegible] bes[illegible] progress of [illegible] a "join-[illegible] Baton [illegible] E official [illegible] Cox, [illegible] C[illegible] ary who [illegible] the [illegible] in [illegible] da[illegible] 1[illegible] go [illegible] ch[illegible] of [illegible]

Re[illegible] ped [illegible] Cox [illegible]

Co[illegible] no P[illegible] grated [illegible] Catholi[illegible] worshi[illegible] segreg[illegible]

The [illegible] the same [illegible] a "kne[illegible] pray-in," Co[illegible] said, b[illegible] participants will be seeking [illegible] church membership [illegible] be the first use of the join[illegible] Cox.

Mean[illegible] Baton Rouge officials were [illegible] considering moves to file [illegible] against Cox who claim[illegible] demonstrators were [illegible] here. High [illegible] preach[illegible] now fr[illegible],000 bo[illegible] four ch[illegible] ning fro[illegible] gro mass demonstration in [illegible] Rouge on Dec. [illegible] which broke up with tea[illegible]

Sheriff Bryan Cle[illegible] the [illegible] a [illegible] stu[illegible] th[illegible]s. F[illegible] d Clemmo[illegible] civil action [illegible] for slande[illegible] charge[illegible] FBI

[illegible] investigation [illegible] Cox [illegible] lea[illegible] in the [illegible] welcom[illegible] tions [illegible] any[illegible] anew [illegible] the [illegible] charges [illegible] sheriff [illegible] secretary [illegible] until the outco[illegible] would wait [illegible] the FBI investigation bef[illegible] ing legal remedies [illegible] ges.

Also [illegible] ice Chief [illegible]

[illegible] Cox and [illegible] to [illegible] Orleans co[illegible] ney [illegible] Rouge [illegible] eral cour[illegible] ainst further [illegible] the restra[illegible] permanent, CO[illegible] would form a new grou[illegible] name to stage [illegible] would not con[illegible] a violation [illegible]

[illegible] Interviewed at New Orleans [illegible] national Airport, said he [illegible] route to Talladega, Ala., where he was scheduled to preach a sermon Sunday at Talladega (Negro) College.

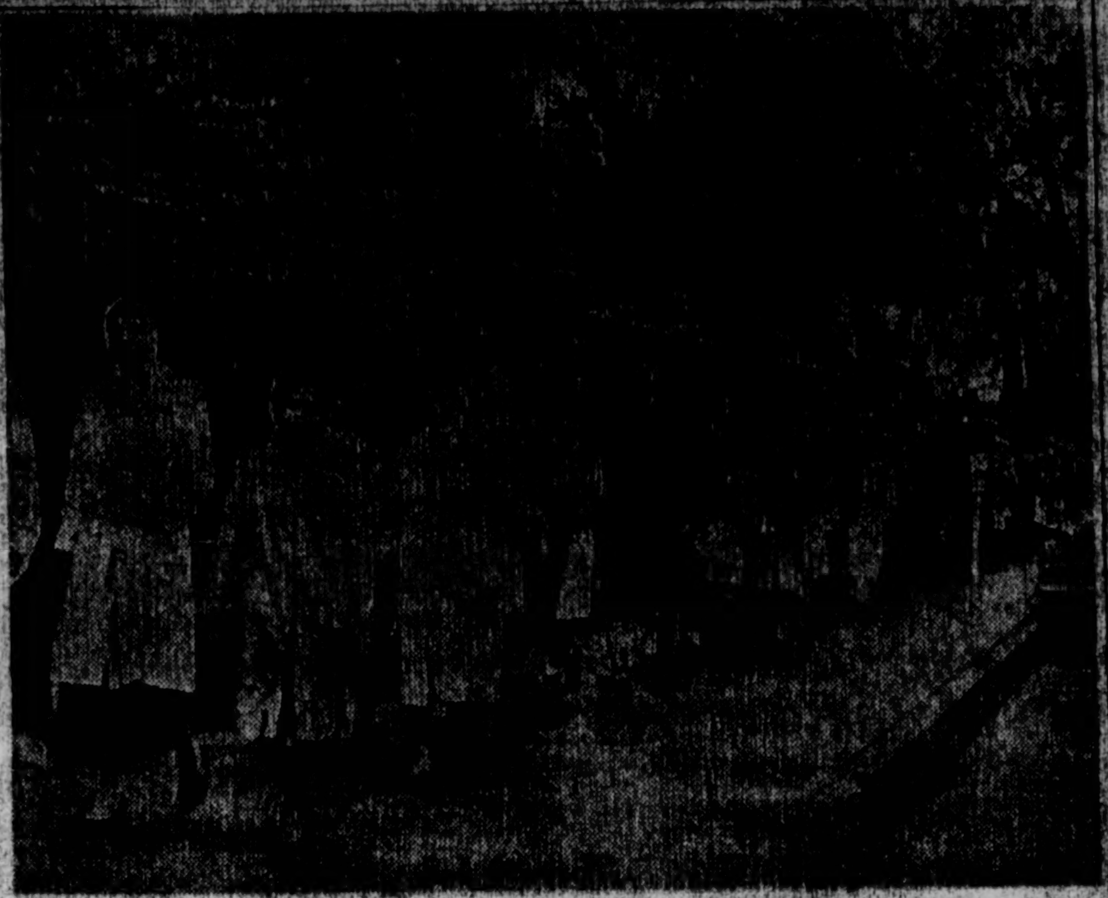
He said he would return for [illegible] Baton Rouge on [illegible] to influence [illegible] criminal mischief [illegible] ce and taking [illegible] after [illegible] the owner.

Pro[illegible] CORE [illegible] Cha[illegible] [illegible]

[illegible] tion [illegible] sti- of [illegible] be Racial [illegible] of CORE [illegible] three East [illegible] ton [illegible] in the M[illegible] me[illegible] the[illegible] til be[illegible] on against [illegible] ch[illegible] les Elton Cox of [illegible] B. a CORE [illegible] oint, N.C.

Th[illegible] the co[illegible] rlier te[illegible] stunt [illegible] p publ[illegible] comed [illegible] ze he[illegible]

C[illegible] Negro CORE leader [illegible] Moore of [illegible] David Dennis [illegible] jailed after [illegible] demonstration [illegible] used [illegible] demon- [illegible] were [illegible] others had [illegible] arrested previous [illegible] demonstrations.



DEMONSTRATION MARCH—Part of the estimated 2,000 young Negroes who participated in a CORE-sponsored demonstration march in downtown Baton Rouge today are shown as they walked southward on St. Philip Street, on the east side of the Old State Capitol. Police used tear gas to disperse the crowd which failed to halt the demonstration after what officials called "a reason-able time."—Photo by Art Kleiner.

CORE Official Arraignment Set Wednesday

Me. 1/3/62

The Rev. Elton B. Cox of High Point, N.C., field secretary of the Congress of Racial Equality, will be arraigned in District Court here Wednesday on four charges filed after he led a demonstration of 1,500 Negroes here Dec. 15.

Dist. Atty. Sargent Pitcher Jr. said Cox will be arraigned before Dist. Judge Fred Blanche Jr.

One of the statutes under which Cox was charged was not a segregation law. It was adopted in 1950 and was designed to keep any public demonstrations away from the courthouse so the courts and court officers would not be interrupted in their business.

The law provides a maximum penalty upon conviction of a $5,000 fine and one year in jail.

Cox is also charged with conspiring to violate the anti-picketing law, violating the disturbing the peace statute and conspiring to take possession of lunch counters on private premises when told to leave by the owners.

The demonstrators were tear-gassed by police after Sheriff Bryan Clemmons warned them to disperse from the parish courthouse.

The group of Negroes had staged the demonstration to protest the arrests a few days ear-
About 40 of nearly 60 persons
lier of 23 sit-in demonstrators,
arrested in the demonstrations
are still in jail.

Cox is free on $[illegible],000 bond.

FILED IN [illegible]

Exhibit St[illegible]

Date Jan [illegible]

Rosalyne [illegible]

Murphy Bell

CORE Gen'l

May 7, 1962

Mr. Lolis Elie
Attorney at Law
2211 Dryades St.
New Orleans, La.

re: B. Elton Cox case retainer.

Dear Lolis:

You already have the original of the Rev. Cox's letter requesting my services (and your firm's) as attorney with reference to his several cases that are now before the Louisiana State Supreme Court on application for writs of habeas Carpus and writs of certiorari, mandamus and prohibition. The briefs in these cases must be filed, as you know, fourteen days before the scheduled arguments in New Orleans on June 8, 1962 at 10:00 A.M.

As you know I have not done anything in regard to these cases, pending clarification of my status as attorney or associate counsel, and pending receipt of a suitable retainer that will justify my delaying or cancelling my regular trial work in order to get into this matter. The Cox case is a tremendously complex criminal proceeding. As I pointed out to you last Saturday at the Institute, the Supreme Court Justices are thoroughly confused as to what is before them for decision. Briefs of the highest excellence are requisite in this matter in order to vindicate Rev. Cox position and insure that he will be exonerated from paying the $5000.00 fine and serving 39 months in jail.

You have already received an indication of how I compute fees for my services. We have already discussed equitable fees in this matter, and I believe that we have agreed that $500.00 was reasonable as compromise for services already rendered in Cox's case. (I drafted all pleadings lodged in the State Supreme Court with possible exception of one.) I am also requesting that an additional $500.00 be paid as compensation for attorney's fees in regard to preparation and argument for the June 8, 1962, Supreme Court Hearing. I further request that this $1000.00 fee be paid without delay in order that I may have sufficient time to confer with your office, delay my regular work, and devote full time to these matters.

WESTERN UNION

Continued from page 1.

It is imperative that I know as quickly as possible whether these terms are acceptable to you and the National office. (I know they are reasonable)

Very truly yours,

Murphy W. Bell

cc. Marvin Rich
James McCain
Nils Douglas
Robert F. Collins
B. Elton Cox

May 8, 1962

Honorable Frank W. Hawthorne
Associate Justice
Louisiana Supreme Court
New Orleans, Louisiana

Dear Justice Hawthorne:

This is a request for an appointment relative to the following matters in which I am one of the attorneys.

Supreme Court Case Number 46079
Application for Habeas Corpus, Certiorari, Mandamus, and Prohibition.
Grounds for the Application of Writs:

1) Defendant was in jail on an illegal sentence
    a) Sentence illegal because there was no 24 hour delay between verdict and sentence and defendant did not waive right to 24 hour delay.

2) The Application for Writs covered 2 Criminal Convictions, both cases were tried simultaneously.

    a) District Court Case Number 42-200
        1) Obstructing the sidewalk
        2) Punishment given $500.00 and five months
        3) Defendant has basic right to appeal
        4) Writs were granted here.

    b) District Court Case Number 42-201
        1) Obstructing Justice
        2) Punishment given $5,000.00 and 1 year.
        3) Defendant has basic right to appeal
        4) Writs were denied here.

This Honorable Court originally denied Writs in both of the above mentioned cases on the grounds that defendant had a right of appeal.

On its own Motion this Honorable Court reconsidered the denial and granted Writs in Case Number 42-200 but reinstated its denial as to 42-201. This Honorable Court in its ruling gave no reasons for the distinction between the 2 cases.

Question: Since both cases were tried in the District Court simultaneously, and since the punishment inflicted afforded defendant a basic right to appeal I am unable to understand the granting of Writs in the one and the denial of Writs in the othere.

I would be greatly indebted to you, sir, Should this appointment be granted.

Respectfully,

COLLINS, DOUGLAS & ELIE

BY____________________

NRD/aem

RECEIVED

May 15, 1962

MAY 22 1962

VLADECK & ELIAS

MEMO TO: Jim Farmer and Carl Rachlin
FROM: Marvin Rich
RE: Cox Bond Money

Johnnie Jones has $6,000 in bond money from Rev. B. Elton Cox. $4,000 of this is due to the Congregational Christian Church. It is an obligation and we should return it as soon as possible. $2,000 has come from CORE. Of this amount $712.50 will be owed to Attorney Jones as the Surety Company's fee. However, the balance of $1,287.50 is our money. In the current financial difficulties we are facing, this money is desperately needed.

On April 13, Rev. Cox wrote Johnnie Jones and gave him five days in which to return the money. Rev. Cox said that if this money were not received in five days he would turn the matter over to the Bar Association. This letter was written at the suggestion of our attorneys. However, we have not done that which we said we would do.

NOTARY PUBLIC

DICKENS 2-8573

JOHNNIE A. JONES
ATTORNEY AT LAW
530 SOUTH 13TH STREET
BATON ROUGE 2, LOUISIANA

RECEIVED
MAY 22 1962
VLADECK & ELIAS

May 19, 1962

Rev. B. Elton Cox
1201 Day Street
Post Office Box 663
High Point, North Carolina

Re: Cases Nos. 46,078 & 46,079, State of La., ex rel. B. Elton Cox v. Bryan Clemmons, Sheriff, E.B.R. Pr., La. On Writs of habeas corpus, certiorari, mandamus and prohibition, pending on the docket of the Supreme Court of La. and assigned for arguments on Friday, June 8, 1962.

C O P Y

Dear Rev. Cox:

In view of your letter of May 12, 1962, terminating my services in connection with your criminal cases originating in the Parish of East Baton Rouge, Louisiana and within the jurisdiction of the 19th Judicial District Court of Louisiana, I will not appear on your cases referred to in the caption hereof, which are pending in the Honorable Supreme Court of Louisiana and are assigned for arguments comes Friday, June 8, 1962.

However, and in view of your said letter of May 12, 1962, I have handed to Attorney Murphy Bell three copies of the "Transcript of Testimony" in your criminal cases numbers 42,199-42,202, State of Louisiana vs. B. Elton Cox, for disposition.

Regretting the deplorable situation growing out of our attorney-client's relationship and hoping for a favorable outcome of your cases and a successful future for you, I am

Yours very truly,

Johnnie A. Jones

Johnnie A. Jones

JAJ/mlj

cc:

Mr. Murphy W. Bell
Bell & Bell
Attorneys at Law
971 South 13th Street
Baton Rouge, Louisiana

Mr. Lolis E. Elie
Collins, Douglas & Elie
Attorneys at Law
1211 Dryades Street
New Orleans 12, Louisiana

Mr. Carl Rachlin
Vladeck & Elias
Counsellors at Law
280 Broadway
New York 7, New York

CORE
38 Park Row
New York 38, New York

AIR MAIL

Cox

RECEIVED
MAY 24 1962
VLADECK & ELIAS

May 21, 1962

Carl Rachlin, Esq.
280 Broadway
New York, New York

Dear Carl:

Here is a resumé of what has transpired on the Cox case since my last report on 5/7/62. My thinking about the case has been changed as a result of my conference with 2 of the associate justices of the Louisiana State Supreme Court. Enclosed you will find a copy of the letter I hand carried down to them. It was through this letter that I received an immediate hearing.

Justice Hawthorne was unable to answer the question posed in this letter. Incidentally, the same question had been posed to other responsible attorneys in the community, a Criminal Judge, the A.C.L.U. Attorney, a Research Clerk for one of the Supreme Court Judges and my colleagues. Justice Hawthorne then brought me to Justice Mc Caleb who indirectly indicated to me that he was under the erroneous opinion that in Supreme Court case number 42-200 that the fine was under $300.00. Justice Mc Caleb concluded the impromptu audience by saying that as to the $500 fine case we secured a writ when we shouldn't have. My recent research leads me to believe that as to the obstructing Justice charge the appeal was properly lodged and our appeal rights are secured in spite of the fact that the return date set by the court had expired without any action on our part. This is so because of a statute saying that once the return date on the appeal has been set its the duty of the Clerk to lodge the record in the Supreme Court, and failure of the clerk to lodge said record does not result in an abandonment of the appeal. I understand now that said record has been lodged in the Supreme Court. This conclusion (that the appeal is still valid) comes as a result of a suggestion made by Justice Hawthorne. You will note however that this conclusion does not agree with the theory that once a sentence is illegally passed everything that happens subsequently is void, including the running of time for appeal. If said appeal is still valid our problem still remains; namely how can we perfect our bills of exception. On the other hand if the error we ultimately plan to claim is one which is patent on the face of the record then we may thereby get a new trial ordered.

If no such error is present then we will be forced to urge the theory I originally suggested (i.e., everything subsequent to sentencing is invalid).

At this point in the game my position is that:

1) As to case number 42-202 the Supreme Court will remand the case to the District Court with orders to permit us to file a Motion for a New Trial and any other motions properly filed subsequent to conviction and prior to sentencing.
    a) Then we will go back up to the Supreme Court on Certiorari.

2) As to case number 42-200 the writ Justice McCaleb says we gratuitously received; it should be remanded because its not properly before the court. The $500.00 fine restricts the Supreme Court to review by appeal.
    a) However the Supreme Court may consider it a minor point that an improper vehicle was used to get a hearing. If it does consider the error a minor one then it too will be remanded with the same orders as 42-202.

3) As to 42-201 Obstructing Justice the case may be set on the Supreme Courts call docket.
    a) If its set on the call docket and the other 2 cases are remanded then once we have perfected writs in 42-202 and once we are back up on appeal in 42-200 we will move for a consolidation of cases and urge those errors which are common to the 3 cases.

Murphy Bell pointed out to me that case number 42-200 is not a felony as I once thought, but there is still the possibility that case number 42-199 (COx acquitted) Criminal Conspiracy is a felony. Whether it is or not depends on the wording of the Bill of Information. If this is so then I don't think we will have too much trouble once the cases are consolidated. Murphy is to send the Bill of Information today.

We decided to submit a Brief ONLY on case number 42-202 and to orally ask the court to consider it a brief for case number 42-200. This will save money. The printers will have it ready this week on the 24th and we will file it on the 25th, the case is to be argued on the last day of this term Friday June 8th.
We will send you a copy of the brief as soon as we get it.

Murphy brought us the full copy of the transcript in the Cox case. I have not finished reading it yet. We don't even have a bill of Exceptions with reference to the segregated court room. All we have is a statement by Johnny which in essence says let the record show that the court room is segregated. To which the Judge responded in essence, let the record also show that of the section normally set aside for whites one half has been granted to Negroes for this trial.

Re: **Ronnie Moore**
Murphy filed the Motion to act on the Application for Particulars. The hearing on the Application is set for June 13th. Murphy will argue the Motion.

Respectfully,

COLLINS, DOUGLAS & ELIE

BY Nils R Douglas

NRD/aem

Enclosure

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

RECEIVED
NOV 2 1962
VLADECK & ELIAS

ROBERT F. COLLINS
NILS R. DOUGLAS
LOUIS E. ELIE

TELEPHONE
523-3670
523-5197

October 23, 1962

COPY

Mr. V. J. Courville, Clerk
Supreme Court of Louisiana
New Orleans, Louisiana

Re: 46,192 State of Louisiana
vs. B. Elton Cox

Dear Sir:

We are the attorneys for the defendant-appellant in the above matter. This case is scheduled to be argued before the Louisiana Supreme Court on November 6, 1962. This is to advise that we are waiving oral arguments in the matter and wish to submit the matter on briefs.

Respectfully yours,

COLLINS, DOUGLAS & ELIE

BY____ ________________

RFC/am

cc: Sargent Pitcher, Esq.
District Attorney, East Baton Rouge Parish
Parish Court House
Baton Rouge, Louisiana

cc: Murphy W. Bell
971 South 13th Street
Baton Rouge, Louisiana

cc: Carl Rachlin, Esq.
280 Broadway
New York, New York

V. J. COURVILLE
CLERK

HAROLD A. MOÏSE, JR.
HUGH ST. PAUL
DEPUTY CLERKS

OFFICE OF THE CLERK
SUPREME COURT OF LOUISIANA
NEW ORLEANS, 16

TELEPHONES
MA. 4075
TU. 7798

November 5, 1962

RECEIVED
NOV 8
VLADECK & ELIAS

Honorable Fred A. Blanche, Jr.
Judge of Division B of the
Nineteenth Judicial District Court
Baton Rouge, Louisiana

Re: No. 46,396
State of Louisiana
vs. B. Elton Cox

Dear Judge Blanche:

Attached is a certified copy of an order this day issued by the Court in the above matter wherein writs were granted with a stay order.

Will you please be governed accordingly.

With kind regards, I am

Cordially yours
Original Signed
V. J. COURVILLE
Clerk

VJC:M

Enc.

cc: Sargent Pitcher, Jr., Esq., District Attorney

Perry M. Johnson, Esq., Clerk of Court

Collins, Douglas & Elie, Esqs., Attorneys at Law

Murphy W. Bell, Esq., Attorney at Law

Carl Rachlin, Esq., Attorney at Law

COPY

Carl; 11/21/62

I got the distinct impression in N.O. that the "misunderstanding" stems from your & the National office lack of information of my work on these cases. As you know we discussed the "Motion to Desegregate the Courthouse" and you made certain suggestions. Here is that motion, corrected and filed. As you can see it has potentiality and "News Value." I also drew the "Venue" motion. I revised and modified Nils' motion to Quash the Amended Bill.

Of course, I filed these motions, but somehow the reporter got mixed me up with Nils, - and I'm "glad" for Nils is making a "scrapbook" of his achievements. I am not. Don't get me wrong - I enjoy working with these fellows, but somehow - I got the impression - and I resent the implication that I'm a "leg man"

— Murray

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

Filed: 11/23/62

STATE OF LOUISIANA

VS. NUMBER: 44,288

B. ELTON COX CRIMINAL DOCKET

* *

MOTION TO DESEGREGATE THE EAST BATON ROUGE PARISH COURTHOUSE, INCLUDING THE CRIMINAL COURTROOM, ALL RESTROOMS, WATER FOUNTAINS AND LUNCHROOM FACILITIES, OR IN THE ALTERNATIVE, TO QUASH THE BILL OF INFORMATION

TO THE HONORABLE, THE JUDGES OF THE NINETEENTH JUDICIAL DISTRICT COURT, IN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

NOW INTO COURT, through undersigned counsel comes B. ELTON COX, reserving his right to file other necessary pleadings herein, now informs the Court on information and belief that he has been charged in and amended Bill of Information filed by the DISTRICT ATTORNEY for the Parish of East Baton Rouge with defaming the Honorable SARGENT PITCHER, JR,; that he is not guilty of the offense set out in the amended Bill of Information, and now moves to desegregate the East Baton Rouge Parish Courthouse and particularly the Criminal Courtroom, all restrooms, water fountains, and lunchroom facilities, or in the alternative to set aside or quash said Bill of Information, for the following reasons, to-wit:

1.

That the accused, B. ELTON COX, mover herein, is a member of the Negro race and a citizen of the State of North Carolina and of the United States of America, but avers that he will be unable to obtain a fair and impartial trial and will be denied due process and equal protection of the laws, all as guaranteed to him by the Fourteenth Amendment to the Constitution of the United States of

America, if he is forced to stand trial in the 19th Judicial District Courthouse under the rigid and highly organized forms of racial segregation and discrimination as presently exist.

2.

That your mover, B. ELTON COX, is a Field Secretary for the CONGRESS OF RACIAL EQUALITY; that high among the objectives of said organization is the abolition of segregation in all public owned institutions; that this fact is known to the officials of the Parish of East Baton Rouge and State of Louisiana; that the avowed policy of the elected officials of the Parish of East Baton Rouge and of the State of Louisiana is to maintain rigid segregation of the races pursuant to the Louisiana Legislature's resolution as declared in La. Acts 1960 at page 1200; that because of this policy your mover has been arrested and jailed on several criminal charges, among which are: Disturbing the Peace Bill of Information number 42-202, Obstructing sidewalks Bill of Information number 42-200, Parading around the Courthouse with the intention of obstructing justice Bill of Information number 42-201; that your mover is innocent of these charges; that he was tried in a segregated Courtroom, over his objection and over objection of counsel; that he was convicted and fined a total of $5900.00 and 19 months in the Parish jail and in default of payment of fines an additional nineteen months, all sentences to run consecutively to each other; that these aforementioned policies and actions of the elected officials of the Parish of East Baton Rouge and State of Louisiana when considered in totality, with the hereinafter mentioned allegations of state-sanctioned and state-enforced segregation in Courthouses constitute a violation of due process of law and equal protection of the laws as defined in the Fourteenth Amendment to the Constitution of the United States of America.

3.

That your mover has been informed and verily believes that the aforesaid Courthouse, Courtrooms and other facilities have been maintained on a segregated basis for many years past and will

This is your Suggestion, Carl

continue to remain so unless the relief sought herein is granted; that officials of the State of Louisiana and particularly the Judges and District Attorney of East Baton Rouge Parish will deny your mover, B. ELTON COX, due process and equal protection of the laws as required by the Fourteenth Amendment to the Constitution of the United States of America unless the East Baton Rouge Parish Courthouse and particularly the criminal Courtroom, all restrooms, water fountains, and lunchroom facilities are desegregated; the criminal courtroom being located on the 3rd floor of said courthouse, with all restrooms on the 3rd floor being designated and reserved "FOR WHITE ONLY"; all restrooms on the 2nd floor of said courthouse along with the commissary or lunchroom being designated and reserved "FOR WHITE ONLY"; all restrooms on the 1st floor of said courthouse being designated and reserved "FOR WHITE ONLY"; with only ONE restroom located in the basement of said courthouse to which Negroes are permitted; that your mover respectfully suggests racial segregation has existed for many years and is existing now in the East Baton Rouge Parish Courthouse in which your mover is to be put on trial for his liberty; that in accordance with the holding in Seniors v. Arnold (1960) 284 F. 2d 106, it is incumbent upon your mover to call this fact to the attention of the presiding judges.

4.

That Louisiana requires that all circuses, shows, and tent exhibitions to which the public is invited have one entrance for whites and one for Negroes. LSA-R.S. 4:5. No dancing, social functions, entertainment, athletic training, games, sports, contests, "and other such activities involving personal and social contacts" may be open to both races. LSA-R.S. 4:451 Acts 1956 No. 579 Sect. 1. Any public entertainment or athletic contest must provide separate sanitary drinking water and "any other facilities" for the two races. LSA-R.S. 4:452 Acts 1956 No. 579 Sect. 2. Marriage between members of the two races is banned. LSA-R.S. 14:79. Segregation by race is required in prisons. LSA-R.S. 15:752. The blind must be segregated. LSA-R.S. 17:10 See also Louisiana Constitution Art. 12 section 9. Teachers in public schools are barred from advocating sesegregation of the races in the public school system. LSA-R.S. 17:443, Art. 1956 No. 249 Sect. 1 and 17:462 Acts 1956 No. 252 Sect. 1. So are other state employees. LSA-R.S. 17:523 Acts 1956 No 250 Sect. 1. Segregation on trains is required. LSA-R.S. 45:528-532. Common carriers of passengers must provide separate waiting rooms and reception room facilities for the two races (LSA-R.S. 45:1301, 1302 Acts 1956 No. 27 Sect. 1 and No. 27 Sect. 2.) and separate toilets and separate drinking water as well. LSA-R.S. 45:1303 Acts 1956 No 27 Sect. 3. Employers must also provide separate eating places in separate rooms and separate eating and drinking utensils for members of the two races. LSA-R.S. 23:972 Acts 1956 No. 395 Sect. 2. Employers must supply separate sanitary facilities LSA-R.S. 23:971 Acts 1956 No. 395 Sect. 1. Negroes and whites cannot rent apartments in same house. LSA-R.S. 14:317. Persons of one race may not establish their residence in a community of another race without approval of the majority of the other race. LSA-R.S. 33:5066. Court dockets must reveal the race of the parties in divorce actions. LSA-R.S. 13:917. And all public parks, recreation centers, playgrounds, community centers and "other such facilities at which swimming, dancing, golfing, skating or other recreational activities are conducted" must be segregated. LSA-R.S. 33:4558.1 Acts 1956 No. 14 Sect. 1-3. That your mover, after an examination and analysis of the segregation laws of the State of Louisiana, could find no statutes or laws that require racial segregation in Courthouses. Mover now avers that segregation of the races in the East Baton Rouge Parish Courthouse exist by Custom which carry the force of law and is enforced by application of the criminal statutes of the State of Louisiana, usually, viz: Vagrancy-LSA-R.S. 14:107, as amended; (See State v. Joan Trumpower, No. 43,189 on the criminal docket of the 19th Judicial District Court of Louisiana), Disturbing the peace-LSA-R.S. 14:103 et seq. and possibly criminal trespass and inciting to criminal trespass LSA-R.S. 14:63.3 and LSA-R.S. 14:63.4 respectively. (La. Acts 78 and 79 of 1960); that this fact of racial discrimination through segregation within the East Baton Rouge Courthouse, coupled with the apparent and actual power of the State of Louisiana to collaterally enforce said segregation with judicial sanction (See Judge Fred A. Blanche, Jr. per curiam To The Bills of Informations in State v. Cox, No. 46, 396 on the docket of Louisiana Supreme Court, presently on appeal and certiorari to Louisiana Supreme Court) through application of its criminal laws denies your mover due process and equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States of America. That the maintenance of a segregated Courthouse, etc., as referred to above does by its very nature offends the due process and equal protection of laws clauses of the Fourteenth Amendment to the Federal Constitution; that your mover, being a Negro, cannot receive a fair trial in a Courthouse that is segregated.

5.

That your mover, B. ELTON COX, is scheduled to be tried for defamation of District Judge Fred A. Blanche, Jr. and defamation of District Attorney Sargent Pitcher, Jr., on November 29, 1962; that mover has been informed by his attorneys that said trials will take a minimum of three days; that it will become necessary for your mover and his friends to utilize all of the facilities of the Courthouse without racial discrimination including the restrooms and drinking fountains on the 3rd floor of said courthouse; the restrooms and the lunchroom on the 2nd floor of the said courthouse; the restrooms on the 1st floor of the said courthouse and all restrooms in the basement of said courthouse, otherwise the conduct of his trial will be seriously hampered and he will be denied due process and equal protection of the laws as defined by the Fourteenth Amendment to the Constitution of the United States of America. (See Derrington v. Plummer (1956) 240 F. 2d 922, certiorari denied in 353 U.S. 924, see also Cooper v. AAron 78

Your citation ↓

Sup. Ct. 1401 and *Turner V. Memphis* 369 U.S. 350); Brown v. Bd. of Education (1954) 347 U.S. 483.

WHEREFORE MOVER PRAYS THAT AFTER DUE PROOF HAD HEREON:

I. That an order issue herein directed to all bailiffs, Sheriffs, Courthouse attaches and employees of the East Baton Rouge Parish Courthouse to cease and desist from restraining, arresting, molesting or in anyway interfering with any person's use and enjoyment of any Courthouse facility to which the public is generally invited.

II. That an order issue herein directed to the proper employee or employees of the East Baton Rouge Parish Courthouse directinf him/or them to remove all signs throughout the Courthouse purporting to restrict or reserve any facility for the exclusive use of persons of a particular race.

III. Or in the alternative, that the Bill of Information be quashed and voided.

IV. For all equitable and legal relief consistent with the premises hereinabove stated.

BY ATTORNEYS:

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans, Louisiana

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

OF COUNSEL:

CARL RACHLIN
280 Broadway
New York, New York

BY: S/ Murphy W. Bell

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally came and appeared:

MURPHY W. BELL

who after first being duly sworn did depose and say that he is one of the attorneys in the above matter and that he prepared the above and foregoing motion and that all the facts and allegations therein contained are true and correct to the best of his knowledge, information and belief.

S/ Murphy W. Bell

MURPHY W. BELL

SWORN TO AND SUBSCRIBED BEFORE ME THIS 16th DAY OF November 1962.

S/ Bruce H. Bell

NOTARY PUBLIC

A True Copy

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

Filed: 11/26/62

STATE OF LOUISIANA

VS.   NUMBER: 44,287 & 288

B. ELTON COX   CRIMINAL DOCKET

:::

MOTION TO QUASH
THE AMENDED BILL OF INFORMATION

NOW into court through undersigned counsel, reserving all rights to file further special pleadings herein, comes B. ELTON COX, defendant in the above entitled and numbered cause and moves to Quash the Amended Bill of Information for the following reasons:

That mover is being denied due process and equal protection of the laws as defined in the Fourteenth Amendment to the Federal Constitution because the allegations hereinafter stated when taken as whole that your mover, B. ELTON COX, Field Secretary for the CONGRESS OF RACIAL EQUALITY is being unfairly prosecuted.

I. A. That on September 7th, 1962 the Grand Jury for the Parish of East Baton Rouge, Louisiana indicted Rev. B. Elton Cox and Rev. Arthur Jelks, Sr., under indictments numbers 44-030 and 44-031 for violation of L.S.A.-R.S. 14:47 defamation of District Attorney Sargent Pitcher, Jr., (44-030) and defamation of Judge Fred A. Blanche, Jr. (44-031).

B. The defense filed responsive pleadings among them being a challenge to the constitutionality of the Grand Jury which returned the true bill.

C. The indictments were nolle prosequied, but simultaneously bills of information were filed charging the same violation.

D. The defense filed responsive pleadings among them being a Motion to Quash. As a result of these pleadings the Bill of Information were amended.

II. A. That in amended information number 44-288 (Defamation of Sargent Pitcher, Jr.) the District Attorney has recused himself according to the minutes of this Honorable Court but still continues through his staff to prosecute said Bill of Information.

B. That the District Attorney has not recused himself in amended information number 44-287 (Defamation of Judge Fred A. Blanche, Jr.)

C. That a Motion to Recuse the District Attorney and his staff has been filed in both cases.

D. Thus your defendant urges that should this Motion to Recuse be denied then this too violates defendant's rights to equal protection and due process as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

III.A. That the defense has filed a Motion to Desegregate the Courtroom in which is outlined:

1) The State's policy of segregation.
2) Many of the state's statutes unconstitutionally requiring segregation.
3) Many of the state's statutes specifically discouraging advocation of integration by state employees.
4) The segregation of the water fountains, rest rooms, lunch counter and court room in East Baton Rouge Parish.

B. That in the Motion to Desegregate the Courtroom permission is asked to introduce evidence to substantiate said motion.

IV. A. That the defendant, a citizen of the State of North Carolina is a field secretary for the Congress of Racial Equality and is an outspoken foe of segregation; that he is charged with defamation of a District Court Judge and the District Attorney both of the Parish of East Baton Rouge, Louisiana; that it is legally impossible for defendant to get a fair trial in a District Court of the Parish of East Baton Rouge and that the defense has filed a Motion for a Change of Venue.

V. A. That defense counsel for codefendant Rev. Arthur Jelks, Sr., is Johnny Jones.

That Johnny Jones was present at the September 4, 1962 meeting of the N.A.A.C.P., at which meeting the alleged defamatory statements were made.

That said Johnny Jones was called as a witness to testify before the Grand Jury which originally indicted Rev. B. Elton Cox and Rev. Arthur Jelks.

That said Johnny Jones is a potential witness for the state and against Rev. B. Elton Cox.

That special motions have been filed on behalf of Rev. Arthur Jelks, Sr.

That these motions have not been argued yet two sets of motions have been filed and argued on behalf of Rev. B. Elton Cox.

That the Court has granted a severance to Rev. Arthur Jelks, Sr., and the District Attorney has not opposed said Severance.

That the attorneys for B. Elton Cox have not been informed as to whether the severance was granted through the discretion of the court or by reasons of antagonistic defenses.

That said Johnny Jones is a potential witness for the state and aganist defendant B. Elton Cox.

That recognizing the right of Attorney Jones to defend Rev. Arthur Jelks, Sr., it is our position that he cannot both defend Rev. Arthur Jelks, Sr. and be a state witness at the same time therefore we urge that by defending the Rev. Arthur Jelks, Sr., Attorney Johnny Jones disqualifies himself to testify as a witness for the state against Rev. B. Elton Cox.

VI. A. That the arrest and prosecution of defendant is in violation of the Constitution of the State of Louisiana Art. 1 Section 3, (freedom of speech).

VII.A. That the arrest and prosecution of defendants is in violation of your defendants right to freedom of speech and

and freedom of assembly guaranteed by the First and Fourteenth Amendments to the Constitution of the United States of America.

VIII A. That the statutes under which the prosecution is based and the Bill of Information founded thereon are unconstitutional and in violation of Article 1 Section 10 of the Constitution of the State of Louisiana which reads in pertinent part:

> "In all criminal prosecutions the accused shall be informed of the nature and the cause of the accusation against him".

IX. A. That the statutes under which the prosecution is based and the indictment founded thereon are unconstitutional and in violation of the Sixth Amendment to the Constitution of the United States in that the defendants have not been informed of the nature and the cause of the accusation against them.

X. A. That the statute under which the prosecution is based is unconstitutional on its face in violation of the "fair notice" theory because it contains without statutory or judicial definition words of such ambiquos meanings and uncertain connotation as "hatred", "contempt", "ridicule", "public confidence" and "social intercourse".

XI. A. That the statute under which the prosecution is based is unconstitutional because it does not supply a definite and ascertainable standard of guilt. The pertinent part of the statute reads:

> Defamation is the malicious publication or expression in any manner, to anyone other than the party defamed of anything which tends (1) to expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse.

XII. A. That the Bill of Information on which the prosecution is based does nothing more than set forth conclusions of law and alleged fact and does not state with certainty and sufficient clarity the nature of the accusation.

XIII A. That L.S.A.-R.S. 15:247 on which the prosecution partially rests reads as follows:

> "An indictment for defamation need not set forth any extrinxic facts for the purpose of showing the application of the party defamed of the defamatory matter on which the indictment is founded, but is sufficient to state generally that the same was published or expressed concerning him".

That said L.S.A.-R.S. 15:247 is unconstitutional on its face in violation of Article 1 Section 10 of the Louisiana Constitution 1921 and in violation of the Sixth Amendment to the Constitution of the United States. Alternatively, that L.S.A.-R.S. 15:247 is unconstitutional in its application being violation of the Louisiana Constitution 1921, Article 1 Section 10, and in violation of the Sixth Amendment to the Constitution of the United States.

XV. A. That the arrest and prosecution of defendants under the circumstances of this case is to deprive them of their rights under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that it is an abuse of the exercise of police power of the State there being no clear and present danger to a substantial interest of the state requiring an abridgement of defendants rights to freedom of speech.

WHEREFORE, your mover prays that after due proof had hereon this MOTION TO QUASH be maintained voiding and holding for naught Bill of Information 44-288.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans 12, Louisiana

MURPHY W. BELL
971 South 13th Street
Baton Rouge 2, Louisiana

OF COUNSEL:

CARL RACHLIN
280 Broadway
New York, New York

BY: S/ Murphy W. Bell

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally came and appeared:

MURPHY W. BELL

who after first being duly sworn did depose and say that he is one of the attorneys in the above matter and that he prepared the above and foregoing motion and that all the facts and allegations therein contained are true and correct to the best of his knowledge, information and belief.

S/ Murphy W. Bell
MURPHY W. BELL

SWORN TO AND SUBSCRIBED BEFORE ME THIS 23 DAY OF November, 1962.

S/ Bruce A. Bell
NOTARY PUBLIC

A True Copy

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

Filed: 11/23/62

STATE OF LOUISIANA	*	
VS.	*	NUMBER:
B. ELTON COX	*	CRIMINAL DOCKET

* *

APPLICATION FOR CHANGE OF VENUE

NOW INTO COURT, through undersigned counsel, comes B. ELTON COX, reserving his rights to file other necessary pleadings herein, and having heard the Bill of Information read and protesting that he is not guilty moves that this Honorable Court do grant him a change of venue and removal of this cause to another Parish, in the manner and form provided by law, for the following reasons, to-wit:

1.

That accused, B. ELTON COX, is a member of the Negro race and a citizen of the State of North Carolina and of the United States of America, but avers that he has good reason to believe, and so believing alleges, that by reason of his forthright stand, public utterances and demonstrations against racial discrimination in the City of Baton Rouge, that said citizens, elected and appointive City, Parish and State officials have become so incensed, it will be impossible for your defendant to secure a fair and impartial trial as is guaranteed to him by Article I section IX of the Constitution of the State of Louisiana and by the due porcess and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States of America.

2.

That accused makes this application as soon as he discovered the existence of such prejudice, and that this application is made not for the purpose of delaying the trial of your defendant, but for the purpose of securing an impartial trial

WHEREFORE MOVER PRAYS:

I. That the District Attorney for East Baton Rouge Parish be ordered to show cause upon a day and at an hour, why the change of venue should not be granted.

II. For all general and equitable relief in the premises.

BY ATTORNEYS:

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans, La.

MURPHY W. BELL
971 South 13th Street
Baton Rouge, La.

BY S/ Murphy W. Bell

OF COUNSEL:

CARL RACHLIN
280 Broadway
New York, New York

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared: MURPHY W. BELL, who after first being duly sworn did depose and say that he is one of the attorneys in the above matter and that he prepared the above and foregoing motion and that all the facts and allegations therein contained are true and correct to the best of his knowledge, information and belief.

S/ Murphy W. Bell
MURPHY W. BELL

SWORN TO AND SUBSCRIBED BEFORE ME, this 23rd day of November, 1962.

A True Copy

S/ Bruce A. Bell
NOTARY PUBLIC

ORDER

CONSIDERING the foregoing motion, IT IS ORDERED by the Court that HONORABLE SARGENT PITCHER, JR., District Attorney for the Parish of East Baton Rouge, show cause in open Court on the ____ day of ______________, 196___, at _____o'clock, ___.M., why a change of venue in this case should not be granted.

Baton Rouge, Louisiana, __________________________, 1962.

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

RECEIVED
[illegible]
VLADECK & ELIAS

November 29, 1963

COPY

Mr. Harold A. Moise
La. State Supreme Court
301 Loyola Avenue
Room 201
New Orleans, Louisiana

RE: State v. B. Elton Cox
Nos. 46,395 and 46,396, consolidated

Dear Sir:

As you know we are applying for Writs of Certiorari to the United States Supreme Court in the above cases.

Please furnish me with a certified copy of the transcript of Appeal in La. Supreme Court case No. 46,395 and the folder of exhibits filed therein.

I would also like a certified copy of the Application for writs in case No. 46,396 as well as the briefs and opinions filed in both cases.

Yours sincerely,

COLLINS, DOUGLAS & ELIE

BY: Robert F. Collins

RFC/vmg

CC: Paul G. Chevigny, Esq.
One Wall Street
New York, New York

Carl Rachlin, Esq.
280 Broadway
New York, New York

12/3

Dear Carl:

This is the draft petition for certiorari in Cox v. Louisiana. I have made references to the transcript of trial, but not to the record on appeal, as I do not have it. I am going to try to turn these into appeal papers this evening. In the meantime this is ready,

Best regards,

Paul

cox appeal

12/4

RECEIVED
[illegible]
VLADECK & ELIAS

Dear Carl:

These are appeal papers in the Cox case. After drawing these, I really think we ought to try this. One great advantage is that we do not need to file the jurisdictional statement with the notice of appeal. The necessity is only to file the notice of appeal within the 90 days, then 60 more for the statement. We thus would have a little time (S & G p 274-6). Call me and we can meet to confer on this

Regards

C54

12/17

Dear Carl:

I enclose herewith the following

(1) Proof of jurisdictional statement, with my corrections, and appendix.

(2) Draft of Notice of Appeal. Stern & Gressman p. 273 The original of this is to be filed with the clerk of the Louisiana Supreme Court, and a copy served on the D.A. Apparently a copy need not be sent to the U.S. Supreme Court. As you know, the clerk of the Louisiana Court has already prepared the record and sent it to us, so we ought to send a covering letter with the Notice, stating that we realize we have received the record. This notice is complete as drawn except for amount of bail. S&G p. 577. It need not be printed.

(3) The record, together with transcript of trial. This is complete. It is to be filed together with the jurisdictional statement, fee, proof of service exactly as in a certiorari. S+G p 275-6.

I Think this is the whole thing

Lots of Luck & Best Regards, and let me know what Louisiana's opposing statement looks like.

Paul C.

December 27, 1963

Honorable V. J. Courville, Clerk
Supreme Court of Louisiana
New Orleans, Louisiana

Re: Cox v. Louisiana,
Nos. 46,395 and 46,396

Dear Sir:

Enclosed you will find a notice of appeal to the Supreme Court of the United States. The papers are being filed early during the week commencing December 30th with the Clerk of the United States Supreme Court.

Obviously, since you have already given us a certified copy of the transcript of the record which is being filed in Washington, as referred to above, it is not necessary for you to give us another copy. As you will recall, we had previously asked you for just such a copy.

Thank you for your courtesy.

Very truly yours,

CR/hm

CARL RACHLIN

cc: Sargent Pitcher, Jr., Esq.

From the Desk of
Nils R. Douglas
Attorney

Dear Carl

I am sending under separate cover the Record in the Cox defamation cases. I think Lolis spoke to you about Briefs for the State Supreme Court in these 2 cases

Respectfully
Nils

will also send copy of the Sup Ct. rules

Merry Xmas

January 2, 1964

Marvin M. Karpatkin, Esq.
660 Madison Avenue
New York, New York

Re: StateofLouisiana vs. B. Elton Cox

Dear Marvin:

Once again I must thank you for offering to help CORE by having one of your associate lawyers prepare the brief in these two criminal libel cases, both entitled Louisiana v. Cox, et ano.

I also enclose a copy of the Rules of Supreme Court of Louisiana. I have written to Nils Douglas asking him to forward the transcript of the testimony which for some reason is not included in the copies of the records he forwarded to me.

With kindest regards.

Sincerely,

CR:cr
encs.

CARL RACHLIN

V. J. COURVILLE
CLERK

HAROLD A. MOISE, JR.
HUGH ST. PAUL
DEPUTY CLERKS

OFFICE OF THE CLERK
SUPREME COURT OF LOUISIANA
NEW ORLEANS, 12

TELEPHONES
523-4075
524-7798

January 2, 1964

Perry M. Johnson, Esq.
Clerk of Court
19th Judicial District Court
Parish of East Baton Rouge
Baton Rouge, Louisiana

Re: No. 46,618
State of Louisiana
Vs. B. Elton Cox

Dear Mr. Johnson:

Attached is a certified copy of a petition and order for a stay of execution of the decree of this Court in the captioned matter for a period of sixty days from December 31, 1963, and which is self-explanatory.

This case is covered by your docket No. 42,201.

Will you please be governed accordingly.

Cordially yours
Original Signed
V. J. COURVILLE
Clerk

VJC:M

cc: Sargent Pitcher, Jr., Esq., District Attorney

Ralph L. Roy, Esq., Assistant District Attorney

Robert F. Collins, Esq., Attorney at Law

Nils R. Douglas, Esq., Attorney at Law

COPY

RECEIVED
JAN [illegible]
[illegible] & ELIAS

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

January 3, 1964

Carl Rachlin, Esq.
280 Broadway
New York, New York

RE: No. 46,618
State of Louisiana
vs. B. Elton Cox

Dear Carl:

Enclosed herewith is a copy of a letter from the Clerk of the Louisiana State Supreme Court indicating that the stay is for sixty days from December 31, 1963. Please let us know what you need to perfect the record for appeal or certiorari.

Yours sincerely,

Bob

BOB

B/v

ENCL: 1

Supreme Court of the United States

OCTOBER TERM, 19 63

RONNIE M. MOORE,
Petitioner ,
vs.
STATE OF LOUISIANA,
Respondent

No. 734

To Sargent Pitcher, Jr., Esq., ***Counsel for Respondent*** :

YOU ARE HEREBY NOTIFIED that the petition for writ of certiorari in the above-entitled and numbered case was filed in the Supreme Court of the United States on the 8th day of January, 19 64

The record filed pursuant to the requirement of Rule 21 (1) consists of:

Transcript of testimony and the refusal of the writs of mandamus, certiorari and prohibition.

(If the record was printed for the use of the court below, state here whether you have or have not filed nine copies as permitted by Rule 21 (4).)

CARL RACHLIN, ESQ.
Counsel for Petitioner .

Form 75 (8-61—10M)

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

January 8, 1963

RECEIVED
JAN 10 1964
VLADECK & ELIAS

Carl Rachlin, Esquire
280 Broadway
New York, New York

RE: RONNIE M. MOORE v. LOUISIANA
No. 734, October Term, 1963

Dear Mr. Rachlin:

The necessary documents having been received, the above-entitled case was docketed today as No. 734, October Term, 1963.

Enclosed are forms for your use in notifying opposing counsel as to the docketing of the case. No return of this service need be made to this office. Also enclosed is a form for the entry of appearance of counsel. Will you kindly complete this form on both sides and return it at your earliest convenience.

Very truly yours,

JOHN F. DAVIS, Clerk

By Edward C. Schade

E. C. Schade
Assistant

ECS:mlg
Enclosures

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543
January 8, 1964

RECEIVED
JAN - 9 1964
VLADECK & ELIAS

Carl Rachlin, Esquire
280 Broadway
New York, New York

RE: B. ELTON COX v. LOUISIANA
No. 735, October Term, 1963

Dear Mr. Rachlin:

The necessary documents having been received, the above-entitled case was docketed today as No. 735, October Term, 1963, and will be brought to the attention of the Court.

Very truly yours,

JOHN F. DAVIS, Clerk

By Edward C. Schade

E. C. Schade
Assistant

ECS:mlg

Cox
fo.

RECEIVED
JAN [illegible]
ADECK & ELIAS

January 8, 1964

Nils Douglas, Esq.
Collins, Douglas & Elie
2211 Dryades Street
New Orleans, Louisiana 70113

Re: Cox Case # 42201 (Obstructing Justice)

Dear Nils:

We have, as you know, prepared appeal papers in the Cox convictions for obstructing the sidewalk and disturbing the peace. We are ready to draw papers in the above case, but we need:

(a) Decision of the Louisiana Supreme Court affirming conviction (if any), and

(b) Briefs and any other papers on appeal, by Cox and by the state.

Can you send these to me?

I hope finally to meet you and your partners at the conference at the end of the month.

Very truly yours,

PGC

Paul G. Chevigny

PGC:el

103 East Irving Lane
Oak Ridge, Tennessee
December 29, 1963

RECEIVED
JAN - [illegible]
VLADECK & ELIAS

Mr. James Farmer, Director
CORE
38 Park Row
New York 38, New York

Dear Mr. Farmer:

Oak Ridge CORE would greatly appreciate legal advice from National CORE regarding our current court case (Joe E. Young and Willie H. Mabrey vs. Mrs. Nelson I. Stephens, Individually and as Chairman of Congress of Racial Equality). This case grew out of a "temporary" injunction issued in Chancery Court July 29 against our picketing on or even coming on the property of Multimatic Laundry. We have been represented by Attorney Martin Southern of Knoxville. I understand that he has recently forwarded to you a copy of his current brief to the Sixth U. S. Court of Appeals. From the start Mr. Southern has sought to have this case removed to a federal court. District Judge Robert Taylor turned down his original request for a change of venue, and the current brief is appealing Judge Taylor's decision.

Mr. Southern is a good friend, sincerely interested in the civil rights cause, but,as he frankly admits, without much experience in this field. He would welcome assistance or advice from someone with a broader background in civil rights cases. When Claude McKissick was in town last fall, he told Mr. Southern he would seek assistance for him from a civil rights lawyer in Nashville, I believe. This help has not materialized. We are hopeful that your legal staff will study our brief and make Mr. Southern and us aware of its appraisal of our case. Do we seem to be on sound legal grounds and are we following the proper course? Do you see any merit in the filing of an amicus curiae by another organization (Oak Ridge Federation for Equal Public Services is seriously considering this) and do you have any suggestions for such a brief?

Mr. Southern has so far charged us only for the cost of printing and filing of papers. We hope to raise the funds locally to pay his expenses to the Appeal hearing in Cincinnati whenever that is scheduled. Even our fundraising efforts would be enhanced, however, by the greater confidence in our case which a legal opinion from your office would afford.

Since our cross suit raises some basic questions of possible nationwide importance, we hope that our request for help will not seem inappropriate.

Sincerely,

Cecile Meyer, Public Relations Chairman
Oak Ridge CORE

CERTIFIED LETTER - RETURN RECEIPT REQUESTED

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

RECEIVED
JAN 10 1964
VLADECK & ELIAS

January 7, 1964

COPY

Clerk
U. S. Supreme Court
Washington, D. C.

ATTENTION: Mr. Shade

Re: State of Louisiana
vs.
B. Elton Cox
Nos: #46,395 and 46,396
and 42, 200

Dear Mr. Shade:

Enclosed please find certification of the notice of appeal to the Supreme Court of the United States.

Sincerely,

COLLINS, DOUGLAS & ELIE

BY: LEElie

LEE/amr

Enclosure

CC: Mr. Carl Rachlin
280 Broadway
New York, New York

January 13, 1964

Hon. V.J. Courville, Clerk
Supreme Court of Louisiana
New Orleans, La.

Dear Mr. Courville: **RE: State v. Cox**

I owe you an apology which I hereby tender.

The Notice of Appeal which was sent to you was a duplicate original because I was under the impression that the original was to be filed in Washington. This was in no way a slight to you personally, nor to your high office. Please forgive me.

Sincerely,

CR/bs

CARL RACHLIN

COPY

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON 25, D. C.

February 24, 1964

FEB 26 REC'D

Sargent Pitcher, Jr., Esq.
District Attorney
Parish of East Baton Rouge
Parish Courthouse
East Baton Rouge, Louisiana

RE: B. ELTON COX v. LOUISIANA
No. 735, October Term, 1963

Dear Sir:

On January 8, 1964, an appeal was filed in this Court in the above-entitled case, and I have been directed by the Court to request that you file a response. Such a response customarily takes the form of a motion to dismiss or affirm.

Forty printed copies of such a motion, together with proof of service thereof, should reach this office on or before March 25, 1964.

Very truly yours,

JOHN F. DAVIS, Clerk

By EP Cullinan

E. P. Cullinan
Chief Deputy

EPC:jmh

AIR MAIL

cc: ✓Carl Rachlin, Esq.
280 Broadway
New York, N. Y.

corr
Cox

PAUL G. CHEVIGNY
One Wall Street
New York

March 26, 1964

RECEIVED
MAR 27 1964
VLADECK, ELIAS, FRANKLE & VLADECK

Supreme Court of the United States
Office of the Clerk
Supreme Court Building
Washington, D. C.

Attention: Mr. Rodack

Re: Cox v Louisiana, Case Nos. 735 and 934

Dear Sir:

Pursuant to our telephone conversation of this afternoon, I am writing to you on behalf of petitioner, Cox, to request the privilege of filing a single consolidated answer to motions by Louisiana to dismiss in both of the above cases. I realize that the rules do not specifically provide for such a consolidation of answers.

This request is made for the reason that counsel for Cox do not have a copy of the transcript of trial in the above cases. (There is but one transcript for both cases.) Our only copy was submitted with the jurisdictional statements, and thus to consult the transcript we must make a trip to Washington. We would like to limit this to one trip, instead of two.

The motion of Louisiana to dismiss has been made in the first of the above cases, but our answer is due before the second motion will be made. The motion of Louisiana in the first case relies heavily on its statement of facts in the case, and the motion in the second case is likely to do the same; both will require a review of the transcript. It would assist us greatly if we could make our answer in both cases after the second motion, and thus consult the transcript now in your possession only once.

Very truly yours,

Paul G. Chevigny

Paul G. Chevigny

cc: Carl Rochlin
Jack Gremillion

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

March 30, 1964

Paul G. Chevigny, Esq.
One Wall Street
New York, N. Y.

RE: COX v. LOUISIANA, No. 735 and
No. 934, October Term, 1963

Dear Mr. Chevigny:

In reply to your letter of March 26th, I would suggest that you have your reply to the motion to dismiss filed by the State of Louisiana in No. 735 on file by April 18th.

There is no indication that the State will file any motion in No. 934. However, if this does occur, you may renew your application.

Very truly yours,

JOHN F. DAVIS, Clerk

By

E. P. Cullinan
Chief Deputy

EPC:jmh

MAR APR 8 REC'D
REC'D

March 31, 1964

Office of the Clerk
Supreme Court of the United States
Washington, D. C. 20543

Attention: Mr. E. P. Cullinan

Re: Cox v. Louisiana, No. 735
and 934, October Term 1963

Dear Sir:

I have received your letter in regard to the above matter. I appreciate your assistance in this matter, and I will arrange to have a reply to the motion in No. 735 filed by April 18.

Very truly yours,

Paul G. Chevigny

cc: Carl Rachlin, Esq.
Jack Gremillion, Esq.

Dear Carl:

The clerk's letter is in effect an extension of time to answer.

PGC

Libel case

APR 14 REC'D

COPY

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEmpleton 2-9600
CABLE "KARPOLAW NEWYORK"

April 13, 1964

Denison Ray, Esq.
Cravath, Swaine & Moore
1 Chase Manhattan Plaza
New York, N.Y.

Re: People v. Cox

Dear Denny:

Herewith some of my views about the contents of our Brief:

1. Obviously the most extensive argument is the unconstitutionality of the Louisiana criminal libel statute on its face, in straight First Amendment terms. The best precedents here are set out in Brennan's opinion in the New York Times, i.e., the history of the only Federal criminal libel statutes, the Alien Sedition Laws. It can be argued that the Supreme Court today would unanimously declare the Alien and Sedition Laws unconstitutional. Under the post-Gitlow incorporation of the First Amendment into the 14th, surely no less can be done with state criminal libel laws. We do not have to go as far as Justice Black in his concurrence. He argues that the First Amendment prohibits and precludes any libel laws, civil or criminal. Nor do we have to go even as far as the Goldberg-Douglas concurrence, since their view seems to be that there can be no civil libel whatsoever by a public official against a critic. We don't have to support either position. Granted there is civil libel, constitutionally-sanctioned, and even by a public official against a critic, so long as the strict standard of malice is met - our argument is that under the Brennan reading of the First Amendment there cannot be criminal punishment - deprivation of liberty - because of mere words which one uses to assault another.

2. But even if it's stretching things a bit to argue that the New York Times case knocks out every State criminal libel statute, it is no stretch at all to argue

that it protects against a criminal libel prosecution based upon criticism of a public official. A vast area of criminal libel will yet remain, if the constitution merely excludes from this area utterances made in criticism of public officials.

3. A special point should be made about the social purposes and effects of the speech, albeit defamatory, involved in this case. It was a criticism of various white public officials by a Negro civil rights leader for their bigoted practices. Furthermore, it was at a meeting conducted for the purpose of encouraging Negro citizens to register and vote. The Supreme Court has in recent years shown a special sensitivity to protecting First Amendment rights in the area of race relations. This is the essence of the NAACP right of association cases, the Florida free speech case involving an NAACP official who refused to name names, the Virginia NAACP improper practice of law case (NAACP v. Button?) and certainly others. This, in my view, is because they regard it as the highest constitutional priority to allow those who advocate adherence to race relations decisions the greatest possible protection. The use of criminal libel statutes by white power structures in communities which stubbornly resist any racial desegregation can be an even more effective repressant than, for example, putting the NAACP out of business in a particular state. The court should declare itself that it will no more tolerate libel convictions for race relations criticism than it will tolerate excessive damage verdicts.

4. We certainly have to face the contentions that the Louisiana Supreme Court heard all these arguments in the Garrison case but unanimously affirmed the conviction nonetheless. To this the following can be said: (1) The Garrison affirmance preceded the New York Times decision; (2) Garrison was one public official allegedly defaming another; Cox was a private citizen. The Times decision is replete with observations of the weakness of an individual as against a public official; if an argument can be made that in Garrison both disputants had equal (relatively) strength and public resources, and that this is of constitutional

COPY

significance, there is certainly no such parity in Cox. (3) As a public official, Garrison may well have had a greater responsibility to temper his remarks about another public official than Cox who was a private citizen. This argument may be particularly applicable as between a D.A. and the Judges before whom he practices. Indeed, in a sense the speech Garrison is accused of sounds more like a contempt than a libel. It is one thing for a private citizen to express the opinion that a judge is corrupt; it is another for the D.A. to say it. (4) There's a distinction in terms of the requirement of malice. Cox's speech was a lot further away from exhibiting malice towards the subjects of his criticism than was Garrison's. Cox was a CORE field worker, dedicated to and experienced in the theory and practice of non-violence. Cox eschews malice and hatred as a matter of basic philosophy. He has no malice towards his worst enemy. The same can surely not be said of Garrison's attack on the Judges.

5. There is also a constitutional argument that can be developed in the element of malice. As I read the Brennan opinion, it seems pretty clear to me that express and actual malice must always be pleaded and proven. There is no constructive or presumptive malice in civil defamation. Can there be a less stringent requirement in criminal defamation? Ergo, the conviction must be reversed since the trial judge took the case and rendered his decision purely and expressly - if I remember the record - on the presumption of malice.

6. No actual malice was proved, or even sought to be proved. There was no testimony seeking to establish that Cox hated or had a malicious attitude towards those he criticized.

7. There is another element of proof which is sorely lacking. The essence of any criminal or cause of action based on defamation is damage to reputation. Garrison undoubtedly damaged the reputation of the judges he attacked as being under racketeering influence. But did Cox' attack have even the slightest effect on the reputations of the Judge and the D.A. whom he criticized? Again there was no proof, or offer of proof. On the contrary, it would seem that Cox' victims experienced an enhancement of reputation precisely because of his attack.

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Denison Ray, Esq.
April 13, 1964.
Page 4.

8. Any other argument concerning burden of proof, e.g., the conflicting testimony of several of the State's witnesses, the absence of any specific recorded verbatim proof of the alleged defamation, might perhaps be mentioned, but I don't see much advantage in pursuing them.

9. Another useful constitutional argument may be made based on the vagueness of the Statute. I believe you have the four Louisiana citations Nils Douglas gave us on the telephone, showing that the Louisiana Supreme Court has not hesitated to strike down statutes whose indefiniteness and uncertitude raised constitutional problems. (If you don't have them, I've left the list with Mrs. Manning in my office.) I would also suggest that you read Klapprot v. New Jersey, a New Jersey Supreme Court case, and Winters v. N.Y., a U. S. Supreme Court case. Also Cramp v. Board of Education of Orlando, Fla. decided in the Spring 1962 term of the U. S. Supreme Court.

I'm sending copies of this letter to Carl Rachlin and to Nils Doublas, et al in New Orleans, with my request for any comments or suggestions they may wish to make. If you need me for anything, Mrs. Manning can reach me. Otherwise, I'll be back on April 20.

Yours sincerely,

Marvin M. Karpatkin
per [illegible]

Marvin M. Karpatkin

MMK:rtg

P.S. I'll ask Mrs. Manning to let you know immediately if we get word about the motion for a continuance; and also to send down to you anything relevant which may be received from New Orleans.

MMK

Dictated but not read.
cc Carl Rachlin, Esq.
Collins, Douglas & Elie, Esqs.

WESTERN
TELEG

501

time shown in the date line on domestic telegrams is LOCAL TIME

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PROBABLE JURISDICATION NOTED TODAY COX AGAINST LOUISIANA CASES =735 AND 934 LETTER FOLLOWS. ADVISE ASSOCIATES =

= JOHN F DAVIS, CLERK =

THE COMPANY ESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

May 4, 1964

MAY - 5 REC'D

Carl Rachlin, Esq.
165 West 46th Street
New York, N.Y. 10007

RE: COX v. LOUISIANA, Nos.
735 and 934, Oct. Term, 1963

Dear Mr. Rachlin:

Confirming my telegram of this date, you are advised that the Court today entered the following orders in the above-entitled cases:

No. 735 - Cox v. Louisiana

In this case probable jurisdiction is noted and the case is placed on the summary calendar.

No. 934- Cox v. Louisiana

In this case probable jurisdiction is noted. The case is placed on the summary calendar and set for oral argument immediately following No. 735.

You are further advised, as provided by Rule 41, that these cases will not be reached for argument until next term, and accordingly, appellant's briefs will not be due until next August 25th, or thirty days after receipt of the printed record, whichever date is later.

Kindly advise your associates of the entry of this order.

Very truly yours,

JOHN F. DAVIS, Clerk
By E. T. Lyddan
Assistant Clerk

ETL:ht
AIRMAIL

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

COPY

December 9, 1964

Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans 13, Louisiana

Re: State v. Cox

Dear Bob, Nils and Lolis:

I received the motion to quash, the supplemental motion to quash, as well as copies of the correspondence from Nils to Murphy Bell.

As I told you on the telephone, I think the papers are excellent and squeeze as much out of the Garrison ~~papers~~ decision as possible. Day before yesterday the Supreme Court summarily reversed Moiety v. Louisiana on the basis of the Garrison decision. I would assume that this might even strengthen the argument in support of the motion to quash.

Of course, the facts in Moiety would have to be studied, but it seems as if the Supreme Court is saying that just about any conviction under the Louisiana Criminal Defamation Statute cannot square with the Garrison rule.

What is the timetable now? Will there be argument or a hearing on the motion? And if denied, what is the probability for a trial date?

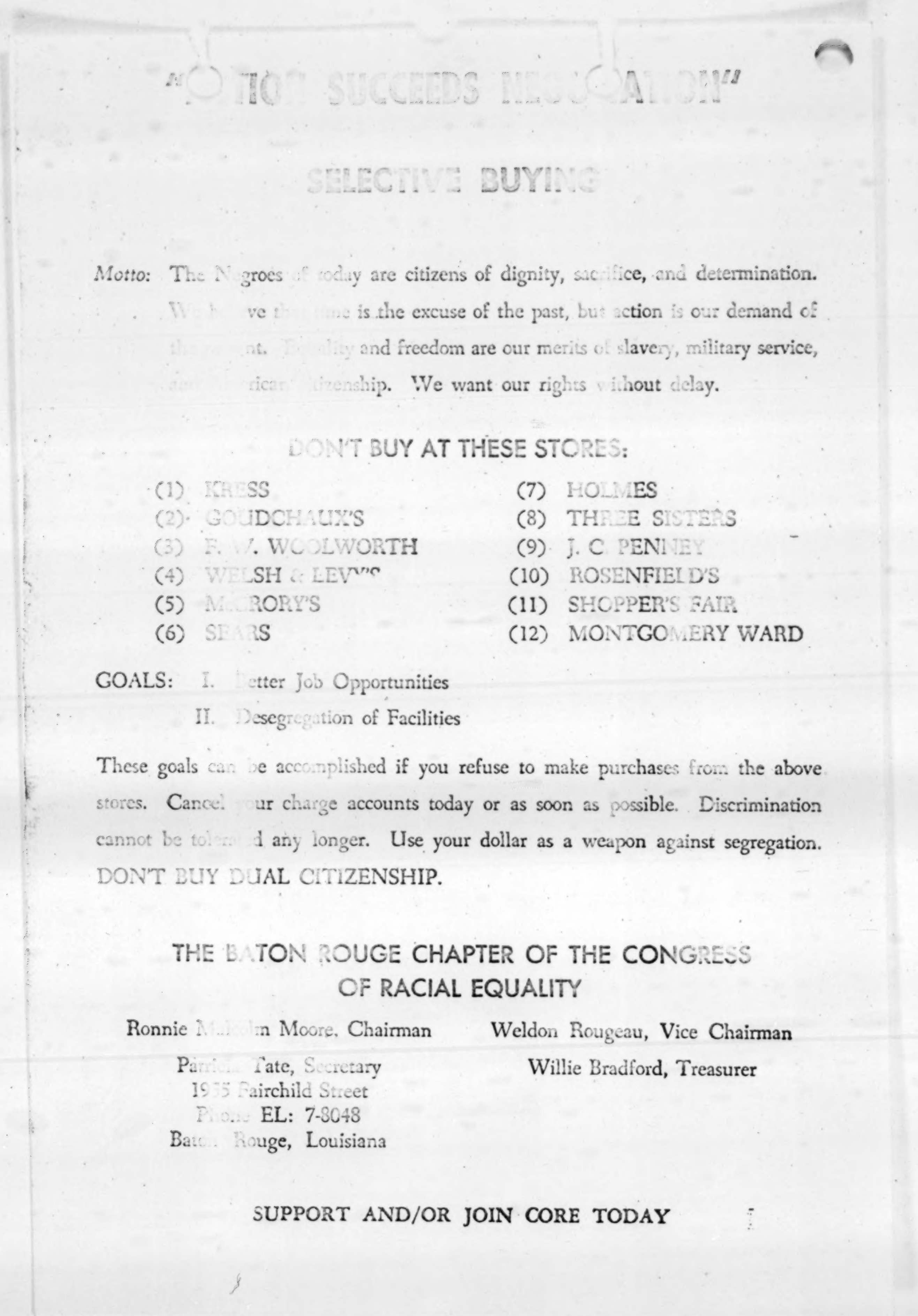
Kindest regards.

Cordially,

Marvin M. Karpatkin

MMK:eb

cc: Carl Rachlin, Esq.



"ACTION SUCCEEDS NEGOTIATION"

SELECTIVE BUYING

Motto: The Negroes of today are citizens of dignity, sacrifice, and determination. We believe that time is the excuse of the past, but action is our demand of the present. Equality and freedom are our merits of slavery, military service, and American citizenship. We want our rights without delay.

DON'T BUY AT THESE STORES:

(1) KRESS
(2) GOUDCHAUX'S
(3) F. W. WOOLWORTH
(4) WELSH & LEVY'S
(5) McCRORY'S
(6) SEARS
(7) HOLMES
(8) THREE SISTERS
(9) J. C. PENNEY
(10) ROSENFIELD'S
(11) SHOPPER'S FAIR
(12) MONTGOMERY WARD

GOALS: I. Better Job Opportunities
II. Desegregation of Facilities

These goals can be accomplished if you refuse to make purchases from the above stores. Cancel your charge accounts today or as soon as possible. Discrimination cannot be tolerated any longer. Use your dollar as a weapon against segregation. DON'T BUY DUAL CITIZENSHIP.

THE BATON ROUGE CHAPTER OF THE CONGRESS OF RACIAL EQUALITY

Ronnie Malcolm Moore, Chairman
Weldon Rougeau, Vice Chairman

Patricia Tate, Secretary
1955 Fairchild Street
Phone EL: 7-8048
Baton Rouge, Louisiana

Willie Bradford, Treasurer

SUPPORT AND/OR JOIN CORE TODAY

Direct Non-Violent Action Clinic
Sponsored by
The Baton Rouge Chapter of the Congress of Racial Equality

Friday, December 8, 1961

3:00 - 4:00 Registration of Participants
Patricia Tate - Registrar

4:00 - 5:00 Discussion on Organizational Structure of CORE
Rev. B. Elton Cox

5:00 - 6:00 Discussion on the History of CORE and the Gandhian Philosophy
Jerome Smith - Convener

6:00 - 6:30 Evening Snack

6:30 - 7:00 Break

7:00 Evening Program - Weldon J. Rougeau, Presiding

1. Invocation - Ronnie M. Moore
2. Introduction of National CORE, New Orleans CORE, and Baton Rouge CORE, Thomas Peete
3. Introduction of Speaker - Patricia Tate
4. Speaker's Address - Rev. B. Elton Cox
5. Announcements

Saturday, December 9, 1961

8:00 - 8:45 Registration
8:45 - 9:00 Assembly - Ronnie Moore
9:00 - 10:30 Workshops

1. Sit-Ins - Julia Aaron and Doris Castle
2. Picketing-Same as Above
3. Freedom Rides - David Dennis
4. Voter's Registration - Acie Belton
5. Jail Discipline - Jerome Smith
6. Discrimination of Job Opportunities - Rev. B. Elton Cox

10:30 - 12:00 HIT AND RUN DEMONSTRATIONS and SUMMARIES OF WORKSHOPS

12:00 - 1:30 Reports of Various Groups involved in Demonstrations and comments by advisors

1:30 - 2:30 Lunch

2:30 - 3:00 Briefing on Selective Buying - B.R. CORE'S Project

3:00 - 4:00 Distribution of circulars

4:00 - 5:00 Statements - Clinic Evaluation - Proposals
Resolutions (Final Assembly - Ronnie Moore)

To: THE NEGRO CITIZENS OF BATON ROUGE AND OTHER RESIDENTS OF EAST BATON ROUGE PARISH

Do You Want Freedom?

Freedon is not a gift, but freedom is a merit that is acquired only through determination and sacrifice. We must be determined not to accept RACIAL DISCRIMINATION and SOUTHERN JUSTICE any longer.

To promote our stride for equality, we have been negotiating with the following downtown merchants as to (1) BETTER JOB OPPORTUNITIES, and (2) DESEGREGATION OF FACILITIES:

(1) KRESS
(2) GOUDCHAUX'S
(3) F. W. WOOLWORTH
(4) WELSH & LEVY'S
(5) McCRORY'S
(6) SEARS
(7) HOLMES
(8) THREE SISTERS
(9) J. C. PENNEY
(10) ROSENFIELD'S
(11) SHOPPER'S FAIR
(12) MONTGOMERY WARD

The evil of segregation can be conquered through "SELECTIVE BUYING."

Since we are aware of the fact that the merchants of the forestated stores are dependent upon the Negroes' dollar for a prosperous business, we are appealing to you not to buy at these stores if we cannot achieve our goal of equality in employment and facilities within the next few days.

Again we appeal to you: Don't Let Your Dollars Buy Discrimination!!!!!

THE BATON ROUGE CHAPTER OF THE CONGRESS OF RACIAL EQUALITY

To join or financially support CORE contact:

MISS PATRICIA A. TATE, Secretary
1955 Fairchild Street
Baton Rouge, Louisiana
ELgin 7-8048

CORE-The Congress of Racial Equality
38 Park Row, New York, N.Y. 10038
CO 7-6270
ATTN: Marvin Rich or Jim Peck

FOR IMMEDIATE RELEASE

HIGH COURT CLEARS LEADER OF 1961 DEMONSTRATION IN BATON ROUGE

Washington, D.C., Jan. 21--Rev. B. Elton Cox, leader of a CORE mass demonstration on December 15, 1961 to desegregate lunch counters in Baton Rouge, Louisiana, was acquitted by the U. S. Supreme Court on January 18 on all three counts under which he ad been arrested and sentenced to 19 months in jail. The decision reversed a ruling by the Louisiana Supreme Court.

Tear gas bombs and police dogs had been used by Baton Rouge police to break up the 1961 demonstration in which some 4,000 persons, most of them Southern University students, participated. They had assembled across from the courthouse to protest the arrest of 23 sit-inners the previous day.

On the disturbing-the-peace charge, the Supreme Court acted unanimously, holding that the Louisiana law is unconstitutionally broad in scope. Regarding the obstructing-public-passages charge, the high court held, seven to two, that the "unfettered discretion" exercised by the local authorities in enforcing a state law against street assemblies, constituted "an unwarranted abridgement" of Cox's freedom of speech. On the picketing-near-a-courthouse charge, the court in a five to four ruling pointed out that local police had agreed to permit demonstrators across the street from the courthouse and had reversed themselves only after the protest action had started.

The successful appeal was handled by Carl Rachlin, CORE's chief counsel and Nils Douglas and Robert Collins, CORE attorneys from New Orleans.

# # #

(Carbon Copy)

46395

NO.____________

SUPREME COURT OF LOUISIANA

DUPLICATE

DUPLICATE

Filed November 2nd 1962
Hazel A St Paul
Dy Clerk

STATE OF LOUISIANA APPELLEE

VS.

B. ELTON COX APPELLANT

NO. 42,200 - CRIMINAL SECTION

NINETEENTH JUDICIAL DISTRICT COURT

IN AND FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

HONORABLE FRED A. BLANCHE, JR., JUDGE PRESIDING

APPEARANCES:

SARGENT PITCHER, ESQ. : Counsel for State of Louisiana
District Attorney : Appellee

JOHNNIE A. JONES, ESQ. : Counsel for the Accused
MURPHY W. BELL, ESQ. :
ROBERT F. COLLINS, ESQ. :
NILS R. DOUGLAS, ESQ. :
LOLIS E. ELIE, ESQ. :
New Orleans, Louisiana : Appellant
CARL RACHILIN, ESQ. :
New York, New York :

FOUR STAR BOND

::

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MINUTES OF COURT

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WEDNESDAY, JANUARY 3, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred A. Blanche, Jr., Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA
VS
B. ELTON COX (CM)

NO. 42,200 - CRIMINAL DOCKET

Charge: Violation of R. S. 14:100.1. Formally arraigned and pleaded not guilty. Set for January 18, 1962.

The Court gave counsel for accused until January 12, 1962, in which to withdraw the plea of not guilty in order to file such motions as he might deem fit and proper.

::

MONDAY, JANUARY 15, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred A. Blanche, Jr., Judge presiding, was opened pursuant to adjournment.

NOS. 42,199, 42,200, 42,201 and 42,202
STATE OF LOUISIANA
VS
B. ELTON COX (CM)

CRIMINAL DOCKET

Counsel for accused filed application for bill of particulars and motion to quash in each matter herein.

Assigned for argument for Tuesday, January 16, 1962.

::

TUESDAY, JANUARY 16, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred A. Blanche, Jr., Judge presiding, was opened pursuant to adjournment.

NOS. 42,199, 42,200
42,201 and 42,202
STATE OF LOUISIANA
VS
B. ELTON COX (CM)
....

CRIMINAL DOCKET

Reassigned for argument January 18, 1962.

::

THURSDAY, JANUARY 18, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred A. Blanche, Jr., Judge presiding, was opened pursuant to adjournment.

NOS. 42,199, 42,200,
42,201, 42,202
STATE OF LOUISIANA
VS
B. ELTON COX
....

CRIMINAL DOCKET

These cases came on for argument in accordance with previous assignment. The motions to quash in each of these cases was argued by counsel, submitted to the Court, and by the Court taken under advisement on briefs to be filed by counsel for the defendant by January 22, 1962, and by the State of Louisiana by January 23, 1962.

. . . .

NOS. 42,199, 42,200,
42,201 and 42,202
STATE OF LOUISIANA
VS
B. ELTON COX (CM)
....

CRIMINAL DOCKET

These cases came on for argument in accordance with previous assignment. The applications for bills of particulars in each of these cases was argued by counsel, submitted to the Court, and by the Court taken under advisement.

::

MONDAY, JANUARY 29, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred A. Blanche, Jr., Judge presiding, was opened pursuant to adjournment.

NO. 42,199
NO. 42,200
NO. 42,201
NO. 42,202
STATE OF LOUISIANA
VS
B. ELTON COX (CM)

....

CRIMINAL DOCKET

The Court, having taken these matters under advisement, for oral reasons assigned, overruled the motions to quash in each matter and overruled the applications for bills of particulars in each matter herein.

Counsel for the accused excepted to the ruling of the Court and reserved a formal bill of exceptions and requested that the applications for bills of particulars in each matter, the motions to quash in each matter, the ruling of the Court and the Court's oral reasons be attached thereto and made a part thereof.

. . . .

NO. 42,199
NO. 42,200
NO. 42,201
NO. 42,202
STATE OF LOUISIANA
VS
B. ELTON COX

....

CRIMINAL FOCKET

On motion of the District Attorney, the Court ordered that these cases be consolidated for trial together.

Johnnie A. Jones, counsel for the accused, stated to the Court that Murphy W. Bell had been associated in the cases as associate counsel for the accused.

These cases were called for trial in accordance with previous assignment, the accused being present in court represented by counsel. A portion of the evidence was introduced and the cases were laid over until Tuesday, January 30, 1962, for the introduction of additional evidence.

::

MONDAY, JANUARY 29, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred A. Blanche, Jr., Judge presiding, was opened pursuant to adjournment.

NO. 42,199
NO. 42,200
NO. 42,201
NO. 42,202
STATE OF LOUISIANA
VS
B. ELTON COX (CM)

....

CRIMINAL DOCKET

The Court, having taken these matters under advisement, for oral reasons assigned, overruled the motions to quash in each matter and overruled the applications for bills of particulars in each matter herein.

Counsel for the accused excepted to the ruling of the Court and reserved a formal bill of exceptions and requested that the applications for bills of particulars in each matter, the motions to quash in each matter, the ruling of the Court and the Court's oral reasons be attached thereto and made a part thereof.

. . . .

NO. 42,199
NO. 42,200
NO. 42,201
NO. 42,202
STATE OF LOUISIANA
VS
B. ELTON COX

....

CRIMINAL DOCKET

On motion of the District Attorney, the Court ordered that these cases be consolidated for trial together.

Johnnie A. Jones, counsel for the accused, stated to the Court that Murphy W. Bell had been associated in the cases as associate counsel for the accused.

These cases were called for trial in accordance with previous assignment, the accused being present in court represented by counsel. A portion of the evidence was introduced and the cases were laid over until Tuesday, January 30, 1962, for the introduction of additional evidence.

::

TUESDAY, JANUARY 30, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred A. Blanche, Jr., Judge presiding, was opened pursuant to adjournment.

NO. 42,199
NO. 42,200
NO. 42,201
NO. 42,202
STATE OF LOUISIANA
VS
B. ELTON COX (CM)

CRIMINAL DOCKET

The trial of these cases was resumed, the accused being present in court represented by counsel. Additional evidence was introduced and the cases laid over until Wednesday, January 31, 1962, for the introduction of additional evidence.

::

WEDNESDAY, JANUARY 31, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred A. Blanche, Jr., Judge presiding, was opened pursuant to adjournment.

NO. 42,199
NO. 42,200
NO. 42,201
NO. 42,202
STATE OF LOUISIANA
VS
B. ELTON COX (CM)

CRIMINAL DOCKET

The trial of these cases was resumed, the accused being present in court represented by counsel. The remainder of the evidence was introduced, and the matter was argued by counsel for the State and counsel for the accused and submitted to the Court.

The Court, for oral reasons assigned, found the accused not guilty in No. 42,199 and found the accused guilty as charged in Nos. 42,200, 42,201 and 42,202. Counsel for the accused excepted to the ruling of the Court and reserved a formal bill of exception and requested that all motions, pleadings, and exceptions be renewed and made a part of the record.

At this time counsel for the accused gave notice in open court to the Court and to the District Attorney of his intention to apply to the Honorable the Supreme Court of the State of Louisiana for writs of certiorari, proHibition and mandamus in Nos. 42,200 and 42,202, and made a motion for an order of appeal returnable to the Honorable the Supreme Court of the State of Louisiana in No. 42,201, at which time the District Attorney suggested that the request was premature. Counsel for the accused then stated to the Court that he would reiterate his motions immediately after sentence was passed.

Whereupon, the Court sentenced the accused as follows: in No. 42,200 to pay a fine of $500.00 and to be confined in the parish jail for five months or in default of the payment of said fine to be imprisoned five months additional; in No. 42,201 to pay a fine of $5,000 and to be confined in the parish jail for one year or in default of the payment of said fine to be imprisoned one year additional, this sentence to run consecutively with the sentence imposed in No. 42,200; and in No. 42,202 to pay a fine of $200.00 and to be confined in the parish jail for four months or in default of the payment of said fine to be imprisoned four months additional, this sentence to run consecutively with the sentences imposed in Nos. 42,200 and 42,201. Counsel for the accused excepted to the verdict and sentence of the Court and reserved a formal bill of exception and requested that all motions, pleadings and exceptions be renewed and made a part of the record.

Counsel for the accused then gave notice in open court to the Court and to the District Attorney of his intention to apply to the Honorable the Supreme Court of the State of Louisiana for writs of certiorari, prohibition and mandamus in Nos. 42,200 and 42,202.

On motion of counsel for the accused, an order of appeal was entered herein in No. 42,201 returnable to the Honorable the Supreme Court of the State of Louisiana, on Friday, March 30, 1962.

::

FRIDAY, FEBRUARY 2, 1962

Nineteenth Judicial District Court, Criminal Division, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

At this time Honorable Fred A. Blanche, Jr. took the bench and the following matters were handled:

STATE OF LOUISIANA, EX REL B. ELTON COX VS BRYAN CLEMMONS, SHERIFF, EAST BATON ROUGE PARISH, LOUISIANA	NO. 42,200 - CRIMINAL DOCKET Application for wirt of habeas corpus filed on behalf of the accused.

::

MONDAY, FEBRUARY 5, 1962

Nineteenth Judicial District Court, Criminal Division, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

At this time Honorable Fred A. Blanche, Jr., took the bench and the following matters were handled:

NOS. 42,200, 42,201 AND 42,202 STATE OF LOUISIANA VS B. ELTON COX (CM)	CRIMINAL DOCKET These matters were called for hearing on applications for writs of habeas corpus, the accused being present in court represented by counsel. The hearing on applications for writs of habeas corpus

was passed.

Counsel for the accused stated that he wished to enter an objection to any ruling the court would make in these cases on the ground that the sentences were illegally imposed, and further stated that he planned to except to any ruling of the court.

The District Attorney requested that the court fix the time within which counsel for the accused should apply for writs of certiorari, prohibition and mandamus. The court fixed the time at ten days from this date for counsel for the accused to apply for writs of certiorari, prohibition and mandamus to the Supreme Court of the State of Louisiana in cases No. 42,200 and 42,202. Counsel for the accused objected to the fixing of the time for application of writs and reserved a formal bill of exception. Counsel for the accused at this time stated to the court that counsel for the accused intended to file a motion for a new trial. The District Attorney objected to the intention of counsel for the accused to file a motion for a new trial on the ground that the Court has lost jurisdiction of the cases. The court, for oral reasons assigned, overruled the motion for a new trial.

Counsel for the accused objected to the sentencing of the accused on the grounds that the sentencing was illegal because the defendant was not given the 24-hour delay after verdict before imposition of sentence, and further, that everything which occurred after imposition of sentence, namely, the entering of the appeal and the notice by counsel for the accused to the Court and to the District Attorney of his intention to apply for writs was also null and void and without any legal effect.

The court, for oral reasons assigned, ruled that the sentencing of the accused was legal inasmuch as counsel for the accused had waived for him any right to delay because of giving notice of intention to apply for writs of certiorari, prohibition and mandamus, and in addition had requested an order of appeal, and further that the court had granted the order of appeal and set the return date. Counsel for the accused excepted to the ruling of the court and reserved a formal bill of exception.

Counsel for the accused further made application to the court for bail pending the order of appeal granted in No. 42,201 and writs to be applied for in Nos. 42,200 and 42,202. The Court fixed the bail in No. 42,201 in the sum of $6,250; in No. 42,200 at $625, and in No. 42,202 at $250.

::

WEDNESDAY, FEBRUARY 21, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

At this time Honorable Fred A. Blanche, Jr. took the bench and the following matters were taken up:

STATE OF LOUISIANA : NO. 42,200, 42,202-CRIMINAL SECTION
VS :
B. ELTON COX :
....

These matters were taken up, the accused being present in court represented by counsel, the court having allowed counsel for the accused until this date to apply for writs of certiorari, prohibition and mandamus to the Honorable the Supreme Court of the State of Louisiana. At this time counsel for the accused stated to the court that he did not intend to apply for writs for the reason that he intended to proceed by another means, namely, a writ of habeas corpus.

Whereupon, the court remanded the accused to the custody of the Sheriff pending these proceedings, because proper and timely application for writs was not made by counsel for the accused.

::

TUESDAY, SEPTEMBER 4, 1962

A session of the Honorable the Nineteenth Judicial District Court, Criminal Division, of the State of Louisiana, in and for the Parish of East Baton Rouge, was begun and held in the courthouse of said parish, in the City of Baton Rouge, Louisiana, on the fourth day of September, being a Tuesday after the first Monday in said month, in the year of our Lord One Thousand Nine Hundred and Sixty-two. Presiding: His Honor, Fred S. LeBlanc, Judge.

At this time Honorable Fred A. Blanche, Jr. took the bench and the following matter was handled:

STATE OF LOUISIANA : NO. 42,200 & 42,202 - CRIMINAL DOCKET
VS
B. ELTON COX (CM)
....

The accused, through counsel, filed herein motion in arrest of judgment and motion for a new trial. Counsel for the accused requested that the minutes show that the District Attorney was served with a copy of said motions this day. The motions were assigned for argument on September 5, 1962.

::

WEDNESDAY, SEPTEMBER 5, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

At this time Honorable Fred A. Blanche, Jr. took the bench and the following matters were handled:

STATE OF LOUISIANA : NO. 42,200 & 42,202 -CRIMINAL DOCKET
VS
B. ELTON COX (CM)
....

The motion for new trial and motion in arrest of judgment were argued by counsel and submitted to the court. The court, for oral reasons, denied both the motion for new trial and the motion in arrest of judgment.

Counsel for accused excepted to the ruling of the Court and reserved a formal bill of exception as to both the motion for a new trial and the motion in arrest of judgment, and requested that each separate motion and the ruling of the Court be attached thereto and be made a part thereof.

At this time counsel for the accused gave notice in open court to the court and to the District Attorney of his intention to apply to the Honorable the Supreme Court of the State of Louisiana for writs of certiorari, prohibition and mandamus, and before applying for the same requested a delay of three weeks before the sentencing of the accused.

Whereupon, the Court ordered that the accused be released on his present bond and be present in court on Monday, September 17, 1962 for sentence.

::

TUESDAY, SEPTEMBER 11, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

At this time Honorable Fred A. Blanche, Jr. took the bench and the following matters were handled:

STATE OF LOUISIANA :
VS :
B. ELTON COX (CM) :
............................:

NO. 42,200 & 42,202-CRIMINAL DOCKET

Counsel for the accused filed herein Bills of Exception Nos. 1, 2, 3, 4, and 5.

::

MONDAY, SEPTEMBER 17, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

At this time Honorable Fred A. Blanche, Jr. assumed the bench when the following matters were taken up:

STATE OF LOUISIANA : **NO. 42,200 & 42,202-CRIMINAL DOCKET**
VS :
B. ELTON COX (CM) :
..............................:

The accused was present in court, represented by counsel, for sentence in the above matters, sentence having been set for today. The accused was brought before the bar for sentence. Whereupon, the Court sentenced the accused as follows: In No. 42,200 (violation of R.S. 14:100.1) to pay a fine of $500.00 and to be confined in the parish jail for five months or in default of the payment of said fine to be imprisoned five months additional, and in No. 42,202 (violation of R.S. 14:103.1) to pay a fine of $200.00 and to be confined in the parish jail for four months/or in default of the payment of said fine to be imprisoned four months additional, the sentence in No. 42,202 to run consecutively with the sentences imposed in No. 42,200 and 42,201.

Counsel for the accused excepted to the sentence of the Court in Nos. 42,200 and 42,202 and reserved a formal bill of exception in each case and requested that all the exceptions that have been previously filed, reserved and overruled in the trial of these matters be made a part of said bill of exception in each of these cases.

::

TUESDAY, SEPTEMBER 18, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

At this time Honorable Fred A. Blanche, Jr. took the bench and the following matters were handled:

STATE OF LOUISIANA : **NO. 42,200 - CRIMINAL DOCKET**
VS :
B. ELTON COX (CM) :
..............................:

The accused, through counsel, gave notice in open court to the court and to the District Attorney of his intention to make a motion for an order of appeal at a later date.

::

WEDNESDAY, OCTOBER 10, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

At this time Honorable Fred A. Blanche, Jr. took the bench and the following matters were handled:

STATE OF LOUISIANA : **NO. 42,200 & 42,202-CRIMINAL DOCKET**
VS :
B. ELTON COX (CM) :
..............................:

The bills of exception Nos. 1 through 5 previously filed herein on September 11, 1962, were this date signed by the Court with per curiam attached thereto.

. . . .

STATE OF LOUISIANA : **NO. 42,200 - CRIMINAL DOCKET**
VS :
B. ELTON COX (CM) :
..............................:

On motion of counsel for the accused, an order of appeal was entered herein returnable to the Honorable the Supreme Court of the State of Louisiana, on Friday, November 9, 1962.

::

.......................BILL OF INFORMATION.......................

(Attached to Bills of Exception Nos. 1, 2, 3 & 5)

...................Filed January 3, 1962..........................

NO [illegible]200
CM

State of Louisiana — Parish of East Baton Rouge

NINETEENTH JUDICIAL DISTRICT COURT

~~Assistant~~ District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that

B. ELTON COX

late of the Parish of East Baton Rouge, on the Fifteenth (15th.) day of December in the year of our Lord One Thousand Nine Hundred and Sixty-One (1961) with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, ~~feloniously did~~ unlawfully did violate the provision of R.S. 14:100.1 in that he did wilfully obstruct the free, convenient and normal use of a public sidewalk within the City of Baton Rouge thereby impeding, hindering and restraining passage thereon.

contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

Sargent Pitcher

~~Assistant~~ District Attorney, Nineteenth Judicial District of Louisiana

Form 2
KENNEDY PRINT SHOP, INC.

No. 42,200

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

STATE OF LOUISIANA

vs.

Elton B. Cox

Baton Rouge, La.

INFORMATION

Violated R.S. 14:100.1

Filed 1/3/62 A. D., 19

Rosalyne B. Dobbs
Deputy Clerk, Nineteenth Judicial District Court

Assistant District Attorney

9/17/62 Sent. $500 & 5 mos.
Jail & in default of
pay of fine 5 mos.
additional

9/18/62 acc. gave not. of int.
To make a motion for
an order of appeal at
a later date

10/1/62 Bills of excep. 1 thru 5
signed by ct. with per
curiam attached

10/10/62 appeal entered & returnable
To Supreme Ct. of La
11/9/62

G. Jones

WITNESSES:

1/3/62 FA & PNG
1/18/62

Date to file motions
1/12/62

1/15/62 - Mot. to Q + app. for
bill of particulars filed - set
for argument 1/16/62

1/16/62 Filed M/Q + B/P Reassigned for arg.
1-18-62

1/18/62 M/Q argued, sub. on briefs to be
filed 1/22 + 1/23; B/P argued, sub. taken
under advisement.

31
1/29/62 Tried and found
guilty - $500 and 5 mos.
or in def. add. 5 mo.
C/A gave notice of intention
to apply for writs

2/2/62 C/A filed appl. for writ of hab. corpus

2/5/62 hearing on writ of hab. corpus
passed. Ct. granted C/A 10 days to
apply for writs to Supreme Ct.
Ct fixed bail bond in this case
at $625. Ct. overrule mot. for
new trial + also mot of C/A that
sentence was illegal

2/21/62 C/A stated he would not
apply for writs, acc. remanded

9/4/62 reassig. for argument 9/5/62

9/5/62 Motion for new trial & motion in arrest of
Jud. denied Sent. to be 9/17/62

MOTION TO QUASH

(Attached to Bills of Exception No. 1, 2, 3 and 5)

Dated January 15, 1962 .... Filed January 15, 1962

STATE OF LOUISIANA	NO. 42,200 - CRIMINAL DOCKET
VS	19TH JUDICIAL DISTRICT COURT
B. ELTON COX	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

MOTION TO QUASH

TO THE HONORABLE, THE JUDGES OF THE NINETEENTH JUDICIAL DISTRICT COURT, IN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

And now into this Honorable Court, through his undersigned counsels, comes B. ELTON COX, the defendant in the above entitled and numbered cause, moves to quash the Bill of Information for the following reasons, to-wit:

-1-

That defendant denies that he violated the provision of LSA-R.S. 14:100.1 as charged in the Bill of Information. However, defendant alleges and avers that on the 15th day of December 1961, in protest of racial segregation, defendant, a citizen of the United States, together with others, did in exercise of his rights accorded defendant by and under the First Amendment to the Constitution of the United States of America, peaceably assemble on a public sidewalk within the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana.

-2-

That while the arrest and charge were for "Obstructing Public Passages", there was no commission of such crime or offense, except for the activities in which the defendant engaged to protest racial segregation, and that the use of the criminal process in such a situation denies and deprives the defendant of his rights, privileges, immunities and liberties guaranteed defendant, a citizen of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

-3-

That LSA-R.S. 14:100.1 is unconstitutional on its face, repugnant to the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States of America, in that, it expressly extends to a bona fide legitmate labor organization the rights accorded and guaranteed citizens of the United States by the First Amendment to the Constitution of the United States of America, while denying and depriving defendant, a member of the Negro race, the same rights.

-4-

That LSA-R.S. 14:100.1 is unconstitutional on its face, in that it denies and deprives defendant, a citizen of the United States of America, of due process and equal protection of the laws, guaranteed the defendant by the Fourteenth Amendment to the Constitution of the United States of America.

-5-

That if said Statute, LSA-R.S. 14:100.1, as amended, does embrace within its terms and meanings, that the defendant, by protesting racial segregation "obstructs public passages", then and in that event said Statute, LSA-R.S. 14:100.1 is unconstitutional, in that it deprives your defendant of his rights, privileges, immunities and/or liberties, without due process of law and denies him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

-6-

That the Bill of Information is insufficient to charge an offense or crime under LSA-R.S. 14:100.1, except violating the rights, privileges, immunities and liberties accorded and guaranteed the defendant, a citizen of the United States, by and under the First and Fourteenth Amendments to the Constitution of the United States of America.

WHEREFORE, your defendant, B. ELTON COX, prays that this Motion to Quash be maintained and that the said Bill of Information as to him, and as far as he is concerned be declared null and void and that he be discharged therefrom.

Attorney for Defendant:

JOHNNIE A. JONES

Robert F. Collins
Nils R. Douglas
Lolis E. Elie
2211 Dryades Street
New Orleans 13, Louisiana

(Signed) BY: JOHNNIE A. JONES

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

AFFIDAVIT

Personally appeared JOHNNIE A. JONES, Esquire, who, after being first duly sworn, deposed and said:

That he is one of the Attorneys for the defendant in the cause hereof; that he has prepared and read the foregoing pleadings, "Motion to Quash"; that, on information and belief, said pleadings are true and correct.

(Signed) JOHNNIE A. JONES
Johnnie A. Jones

SWORN TO and SUBSCRIBED before me this 15th day of January, 1962.

(Signed) MURPHY W. BELL

NOTARY PUBLIC

APPLICATION FOR BILL OF PARTICULARS

(Attached to Bill of Exception No. 5)

Dated January 15, 1962 Filed January 15, 1962

STATE OF LOUISIANA	NO. 42,200 - CRIMINAL DOCKET
VS	19TH JUDICIAL DISTRICT COURT
B. ELTON COX	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

APPLICATION FOR BILL OF PARTICULARS

Now into this Honorable Court, through his undersigned counsels, comes B. ELTON COX, made defendant in the above entitled and numbered cause, and before arraignment, pleads that he is unable to properly prepare his defense herein, until he is furnished with a Bill of Particulars upon the following, to-wit:

-1-

State when, where and how the defendant obstructed the free convenient and normal use of a public sidewalk within the City of Baton Rouge, thereby impeding, hindering and restraining passage thereon.

WHEREFORE, your defendant, B. ELTON COX, prays that the State of Louisiana through the District Attorney, Parish of East Baton Rouge, State of Louisiana, be ordered by this Honorable Court to furnish the said Bill of Particulars above requested; and that service of same be made upon this defendant and that the Honorable District Attorney for the Parish of East Baton Rouge, State of Louisiana, be duly served with a copy hereof.

And your defendant prays for all such other relief to which he is or may be entitled.

Attorneys for Defendant:

JOHNNIE A. JONES

Robert F. Collins
Nils R. Douglas
Lolis E. Elie
2211 Dryades Street
New Orleans 13, Louisiana

(Signed) BY: JOHNNIE A. JONES

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

AFFIDAVIT

Personally appeared JOHNNIE A. JONES, Esq., who, after being first duly sworn, deposed and said:

That he is one of the Attorneys for the defendant in the cause hereof; that he has prepared and read the foregoing pleadings, "Application for Bill of Particulars"; that, on information and belief, said pleadings are true and correct.

(Signed) JOHNNIE A. JONES
JOHNNIE A. JONES

SWORN TO And SUBSCRIBED before me this 15th day of January, 1962.

(Signed) MURPHY W. BELL
NOTARY PUBLIC

ORDER

Let Honorable SARGENT PITCHER, JR., District Attorney for the Parish of East Baton Rouge, State of Louisiana, be, and he is hereby Ordered to furnish the defendant, B. ELTON COX, the

Particulars requested in the foregoing application, within 1 days from the date hereof.

Baton Rouge, Louisiana, January 15, 1962.

(Signed) FRED A. BLANCHE, JR.
JUDGE

............APPLICATION FOR WRIT OF HABEAS CORPUS...............

......Dated February 2, 1962........Filed February 2, 1962......

STATE OF LOUISIANA	NO. 42,200 - CRIMINAL DOCKET
VS	19TH JUDICIAL DISTRICT COURT
B. ELTON COX	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

APPLICATION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE, THE JUDGES OF THE NINETEENTH JUDICIAL DISTRICT COURT, IN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

The petition of the STATE OF LOUISIANA, on the relation of B. ELTON COX (hereinafter referred to as "RELATOR") respectfully shows:

-1-

That he is now illegally and/or unlawfully imprisoned, detained and restrained of his liberty by the Honorable BRYAN CLEMMONS, a resident of and domiciled in East Baton Rouge Parish, State of Louisiana.

-2-

That the said Honorable BRYAN CLEMMONS is the duly elected Sheriff of the Parish of East Baton Rouge, State of Louisiana and by virtue of his authority therefrom claims to hold in custody and imprison your relator pursuant to an order of imprisonment issued by the Honorable Fred A. Blanche, Jr., Judge, Division "B" of the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana.

That the said imprisonment and detention of your relator, B. ELTON COX, is illegal and in violation of the Constitution and laws of the State of Louisiana, for the following reasons:

a) That relator was tried for the crime of "Obstructing Public Passages," the provisions of LSA-R.S. 14.100.1, as amended, in Division "B" of the Nineteenth Judicial District Court of Louisiana, the Honorable Fred A. Blanche, Jr., Judge presiding; that the trial commenced Monday, January 29, 1962 and ended Wednesday, January 31, 1962 at or about the hour of 9:30 P.M.; that immediately after the closing argument of the District Attorney for the Parish of East Baton Rouge, State of Louisiana, the Honorable Judge dictated into the record his reasons for verdict and then and there announced a verdict of "GUILTY," to which verdict attorneys for relator excepted to and reserved a formal bill of exceptions and gave notice to the Court and to the District Attorney that they intend to, on behalf of relator, apply to the Honorable Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition and requested that all formal bills, motions and pleadings taken and filed on behalf of the relator be renewed, but not withstanding, the Honorable presiding Judge proceeded to read the Statute under which the relator is charged and upon the conclusion of his reading of the said Statute pronounced sentence without informing or notifying the relator that he was then and there imposing sentence; that the relator was never asked to stand and face the Court for the imposition of sentence; and the record is devoid of any evidence to show that the relator was present in the courtroom at the imposition of the sentence, notwithstanding that he could have been present in Court at the imposition of sentence.

b) That twenty-four (24) hours did not elapse between conviction and sentence as required by law, particularly LSA-R.S. 15:521; that the relator did not waive the delay of twenty-four

(24) hours between conviction and sentence, nor did he request of the Court immediate imposition of sentence. Thus, the said sentence is null and void and without any legal effect or validity, for:

> "Sentence imposed upon defendant within 24 hours after conviction of felony is premature and void, in absence of showing that defendant intentionally waived delay and requested immediate sentence, mere failure to object being insufficient." State v. Mistich, 186 La. 174, 171 So. 841.

> "Defendant need not say in so many words he waives benefit of 24 hour delay before imposition of sentence, but it is sufficient if defendant, informed he is entitled to delay, declares he is ready for sentence." State v. Martin, 199 La. 39, 5 So. (2d) 377.

-4-

That relator shows, alleges and avers that he is illegally incarcerated in the jail of East Baton Rouge Parish, Louisiana; that he is therein being unlawfully detained without bail, violative of LSA-R.S. 15:85 and LSA-R.S. 15:86 as well as LSA-R.S. 15:551, as amended, for the following reasons, to-wit:

> a) "Bail is a constitutional right except in capital cases, where the proof is evident or the presumption great. The Judge has no discretion to refuse it, even pending an appeal from a conviction." In re Longworth, 7 La. Ann 247 (1852); State v. Roger, 7 La. Ann 382, (1852); Governor v. Fay, 8 La. Ann 490, (1853).

> b) "One who was convicted of a misdemeanor is entitled to be released on bail during the pendency in the Supreme Court of his application for a review of his convictions; but whether he should so be released upon giving notice of his intention to apply is largely within the discretion of the Judge below, who, however, should release unless he has good reason to believe that the notice is not given in good faith." State v. Hollingsworth, 137 La. 144, 68 So. 387.
>
> c) "One sentenced to imprisonment in a misdemeanor case is entitled to bail as soon as the order of appeal is granted, and, in granting bail it is error to stay execution of the order until the transcript of appeal shall be lodged in the Supreme Court." In re Whittiker, 151 La. 621, 92 So. 138.

-5-

That relator now shows, alleges and avers that he should be released upon his furnishing good and sufficient security in the manner prescribed by law; that relator is entitled to and desires to be released on bail bond before legal sentence and pending the final disposition of this case; that relator shows, alleges and avers that he has in good faith served notice on this Honorable Court of his intention to apply for appellate relief in the cause hereof, and that he is amply capable of furnishing the necessary security in the manner prescribed by law.

-6-

That relator alleges and avers that the sentence imposed on him by this Honorable Court on January 31, 1962 is illegal, unlawful, null, void and violative of rights accorded by the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States of America, and that said sentence and the subsequent proceedings had in the cause hereof, should be avoided and set aside for sake of said nullity, so relator desired.

WHEREFORE, your relator, B. ELTON COX, prays:

I. That a "Writ of Habeas Corpus" may issue out of this Honorable Court, The Nineteenth Judicial District Court of the Parish of East Baton Rouge, State of Louisiana, to the Honorable BRYAN CLEMMONS, Sheriff of the Parish of East Baton Rouge, State of Louisiana, requiring and directing him to produce the body of your relator B. ELTON COX, before the said Court at some time convenient to be designated, to abide what shall be awarded by the Court in the premises, and that your relator, B. ELTON COX, may be discharged from said imprisonment.

II. That your relator, B. ELTON COX, further prays that the said sentence imposed on him in the cause hereof on January 31, 1962, and the subsequent proceedings thereto, be decreed null, void and without any legal effect or validity, and that same be avoided, cancelled, dismissed, struck or erased from the record and set aside, and that your relator be discharged therefrom.

And for all general and equitable relief that the nature of the case may permit.

Attorneys for Relator:

JOHNNIE A. JONES

Robert F. Collins
Nils R. Douglas
Lolis E. Elie
2211 Dryades Street
New Orleans, Louisiana

Murphy W. Bell
971 South 13th Street
Baton Rouge, Louisiana

(Signed) By: JOHNNIE A. JONES

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

AFFIDAVIT

On this 2nd day of February, 1962, before me the undersigned authority, personally came and appeared the relator,

-------------------------B. ELTON COX---------------------------,

who, upon affirmation, says:

That all of the allegations of fact contained in the foregoing application or petition for "Writ of Habeas Corpus" are true in substance and in fact.

(Signed) B. ELTON COX
B. ELTON COX

AFFIRMED TO and SUBSCRIBED before me this 2nd day of February, 1962.

(Signed) JOHNNIE A. JONES
NOTARY PUBLIC

ORDER

CONSIDERING the application or petition of B. ELTON COX filed herein, claiming that he is illegally imprisoned and restrained of his liberty by HONORABLE BRYAN CLEMMONS in the jail of East Baton Rouge Parish, State of Louisiana, and it appearing to the Court that a "Writ of Habeas Corpus" ought to issue:

IT IS ORDERED that a "Writ of Habeas Corpus" issue out of and under the seal of this Honorable Court directed to the said BRYAN CLEMMONS, Sheriff of the Parish of East Baton Rouge, State of Louisiana, commanding him to have the body of the said B. ELTON COX before me in the courtroom of this Court at the hour of 10:00 o'clock A.M., on the 5th day of February, 1962, to do and receive what shall then and there be considered concerning the said, B. ELTON COX, together with the time and cause of his detention and that he the said, BRYAN CLEMMONS have then and there the said writ.

Baton Rouge, Louisiana, this 2nd day of February, 1962.

(Signed) FRED A. BLANCHE, JR.
JUDGE, the 19th Judicial District
Court of Louisiana

MOTION IN ARREST OF JUDGMENT

(Attached to Bill of Exception No. 3)

Filed September 4, 1962

STATE OF LOUISIANA	NO. 42,200 - CRIMINAL DOCKET
VS	19TH JUDICIAL DISTRICT COURT
B. ELTON COX	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

MOTION IN ARREST OF JUDGMENT

NOW INTO COURT, after verdict against B. ELTON COX, and before sentence the said B. ELTON COX, through undersigned counsel, and moves the Court here to Arrest Judgment herein and not to pronounce the same because of manifest errors in the record appearing to-wit:

-1-

That at the beginning of the trial (Transcript Page 4) attorney Johnny Jones moved for the record to show that Murphy Bell, Attorney, was associated on the case with him.

That the court ordered a minute entry to that effect.

That Attorney Jones also asked for the same record to show that the courtroom was segregated to which request the District Attorney objected and to which the court replied:

> "Also let the record show that it has been the practice and custom in the East Baton Rouge Parish Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white and let the record especially show that the judge in this case ordered that half of the seats that were formerly reserved and available for white people are now being occupied and filled by colored people".

That on Wednesday, January 31, 1962 (transcript page 278) Johnny Jones renewed his objection to the segregated courtroom, in the following words:

> "Your Honor, I want to renew our objection about court being segregated and I want to reserve a formal bill".

To which the court replied:

> "Well, I just don't think it makes any difference I don't know If he has got any right to a bill on it or not, but I will let him perfect on it, if he wants to".

Then after some discourse between Mr. Pitcher and Mr. Jones the court said:

> "Let it stand as it is".

The above statements are held by counsel to constitute a correct reserving of an objection and the reserving of a Bill of Exceptions to the overruling of the Motion to Desegregate the Courtroom. If not so deemed, then it is our alternative position that the remarks of the court constitutes a part of the record which may properly be presented in review for error in a Motion in Arrest of Judgment.

Thus the record shows on its face that defendant was deprived of rights guaranteed him under the equal protection of the laws and due process of law clauses of the Fourteenth Amendment to the Constitution of the United States.

-2-

That the Bills of Information are insufficient to charge a crime under L.S.A.-R.S. 14:103.1 and 14:100.1.

-3-

That the convictions of defendant for violation of L.S.A.-R.S. 14:103.1 paragraph A subpart 1 and for violation of L.S.A.-R.S. 14:100.1 denied defendant rights guaranteed to him under the first amendment to the Constitution of the United States.

-4-

That the convictions of defendant for violation of L.S.A.-R.S. 14:103.1 paragraph A subpart 1 and for violation of L.S.A.-R.S. 14:100.1 denied defendant rights guaranteed to him hunder the Sixth Amendment to the Constitution of the United States.

-5-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that they were enacted for the specific purpose and intent to implement and further the states policy of enforced segregation of races.

-6-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that they were arbitrarily, capriciously and discriminately enforced against persons peacefully exercising their rights of freedom of speech in protest against racial segregation.

-7-

That the statutes under which defendant is convicted and the Bills Of Information filed thereunder are unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statutes could not constitutionally be construed to cover the activities sought to be punished by the Louisiana Courts.

-8-

That the judgments are contrary to the law and the evidence in that there is no evidence to support a finding of guilt under either statute thus violating defendants rights under the Due Process Clause of the Fourteenth Amendment.

-9-

That the judgments are unconstitutional in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that it is constitutionally impossible to charge and convict a defendant for disturbing the peace when the body of the statute prohibits crowding or congregating"...under circumstances such that a breach of the peace may be occasioned thereby.

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause, if any he has, why a Motion in Arrest of Judgment should not be granted in these proceedings.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades St., N. O. La.
(Signed) BY Nils R. Douglas
MURPHY W. BELL
971 South 13th St., B. R., La.

OF COUNSEL:
CARL RACHLIN
280 Broadway
New York, New York

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally came and appeared:

NILS R. DOUGLAS

who after first being duly sworn did depose and say that he is the attorney in the above matter and all the allegations herein contained are true and correct.

(Signed) Nils R. Douglas
NILS R. DOUGLAS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS ______ OF
____________, 1962.

____
NOTARY PUBLIC

ORDER

CONSIDERING the foregoing Motion In Arrest of Judgment,

IT IS ORDERED that the Honorable Sargent Pitcher, Jr., District Attorney for the 19th Judicial District Court show cause on the _____ day of __________, 1962 at ______.m. why a Motion In Arrest of Judgment should not be granted hrein.

____

JUDGE

MOTION FOR A NEW TRIAL

(Attached to Bill of Exception No. 2 & No. 3)

Filed September 4, 1962

STATE OF LOUISIANA	NO. 42,200 - CRIMINAL DOCKET
VS	19TH JUDICIAL DISTRICT COURT
B. ELTON COX	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

MOTION FOR A NEW TRIAL

NOW INTO COURT, through undersigned counsel comes B. ELTON COX, the defendant in the above entitled and numbered cause and moves the court that the verdict rendered herein be set aside and a New Trial ordered, for the following reasons:

-1-

That the Bills of Information are insufficient to charge a crime under L.S.A. R. S. 14:103.1 and 14:100.1.

-2-

That the convictions of defendant for violation of L.S.A. - R.S. 14:103.1 paragraph A subpart 1 and for violation of L.S.A. - R.S. - 14:100.1 denied defendant rights guaranteed to him under the first amendment to the Constitution of the United States.

-3-

That the convictions of defendant for violation of L.S.A. - R.S. 14:103.1 paragraph A subpart 1 and for violation of L.S.A. - R.S. 14:100.1 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

-4-

That the courts overruling of defendants objection to the segregated seating in the courtroom to which ruling defendant reserved a formal

Bill of Exceptions was error and prejudicial to the defendant in that it denied him the right to a fair trial guaranteed to him by Article I Section 6 of the Constitution of the State of Louisiana. Said error further denied defendant the equal protection of the laws and due process of law guaranteed to him by the first section of the Fourteenth Amendment to the Constitution of the United States.

-5-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that they were enacted for the specific purpose and intent to implement and further the states policy of enforced segregation of races.

-6-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that they were arbitrarily, capriciously and discriminately enforced against persons peacefully, exercising their rights of freedom of speech in protest against racial segregation.

-7-

That the statutes under which defendant is convicted and the Bills of Information filed thereunder are unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statutes could not constitutionally be construed to cover the activities sought to be punished by the Louisiana Courts.

-8-

That the judgments are contrary to the law and the evidence in that there is no evidence to support a finding of guilt under either statute thus violating defendant's rights under the Due Process Clause of the Fourteenth Amendment.

That the judgments are unconstitutional in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that it is constitutionally impossible to charge and convict a defendant for disturbing the peace when the body of the statute prohibits crowding or congregating "...under circumstances such that a breach of the peace may be occasioned thereby".

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause, if any he has, why a New Trial should not be granted in these proceedings.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans 13, Louisiana

(Signed) BY: NILS R. DOUGLAS

MURPHY W. BELL
971 South 13th St., Baton Rouge, La.

OF COUNSEL:
CARL RACHILIN
280 Broadway
New York, New York

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally came and appeared:

NILS R. DOUGLAS

who after first being duly sworn did depose and say that he is the attorney in the above matter and all the allegations herein contained are true and correct.

(Signed) NILS R. DOUGLAS
NILS R. DOUGLAS

SWORN TO AND SUBSCRIBED BEFORE ME
THIS _____ DAY OF _________, 1962.

_______________________________ NOTARY PUBLIC

ORDER

CONSIDERING the foregoing Motion For A New Trial, IT IS ORDERED that the Honorable Sargent Pitcher, Jr., District Attorney for the 19th Judicial District Court show cause on the _____ day of ________, 1962 at ________.M. why a New Trial should not be granted herein.

________ day of ________, 1962

Baton Rouge, Louisiana

____

JUDGE

BILL OF EXCEPTION NUMBER ONE

Dated October 10, 1962 Filed September 11, 1962 & /October 10, 1962

STATE OF LOUISIANA	NO. 42,200 - CRIMINAL DOCKET
VS	19TH JUDICIAL DISTRICT COURT
B. ELTON COX	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

BILL OF EXCEPTION NUMBER ONE

BE IT REMEMBERED that before entering on the trial of this case, your defendant, having heard the information read and protesting that he was not guilty of the offenses set out therein, filed the following Motions to Quash the said information:

MOTION TO QUASH

TO THE HONORABLE, THE JUDGES OF THE NINETEENTH JUDICIAL DISTRICT COURT, IN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

And now into this Honorable Court, through his undersigned counsels, comes B. ELTON COX, the defendant in the above entitled and numbered cause, moves to quash the Bill of Information for the following reasons, to-wit:

-1-

That defendant denies that he violated the provision of LSA-R.S. 14:100.1 as charged in the Bill of Information. However, defendant alleges and avers that on the 15th day of December 1961, in protest of racial segregation, defendant, a citizen of the United States, together with others, did in exercise of his rights accorded defendant by and under the First Amendment to the

Constitution of the United States of America, peaceably assemble on a public sidewalk within the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana.

-2-

That while the arrest and charge were for "Obstructing Public Passages", there was no commission of such crime or offense, except for the activities in which the defendant engaged to protest racial segregation, and that the use of the criminal process in such a situation denies and deprives the defendant of his rights, privileges, immunities and liberties guaranteed defendant, a citizen of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

-3-

That LSA-R.S. 14:100.1 is unconstitutional on its face, repugnant to the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States of America, in that, it expressly extends to a bona fide legitimate labor organization the rights accorded and guaranteed citizens of the United States by the First Amendment to the Constitution of the United States of America, while denying and depriving defendant, a member of the Negro race, the same rights.

-4-

That LSA-R.S. 14:100.1 is unconstitutional on its face, in that it denies and deprives defendant, a citizen of the United States of America, of due process and equal protection of the laws, guaranteed the defendant by the Fourteenth Amendment to the Constitution of the United States of America.

-5-

That if said Statute, LSA-R.S. 14:100.1, as amended, does embrace within its terms and meanings, that the defendant, by protesting racial segregation "obstructs public passages", then and in that event said Statute, LSA-R.S. 14:100.1 is unconstitutional, in that it deprives your defendant of his rights, privileges, immunities and/or liberties, without due process of law and denies him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

-6-

That the Bill of Information is insufficient to charge an offense or crime under LSA-R.S. 14:100.1, except violating the rights, privileges, immunities and liberties accorded and guaranteed the defendant, a citizen of the United States, by and under the First and Fourteenth Amendments to the Constitution of the United States of America.

WHEREFORE, your defendant, B. ELTON COX, prays that this Motion to Quash be maintained and that the said Bill of Information as to him, and as far as he is concerned be declared null and void and that he be discharged therefrom.

Attorneys for Defendant:

JOHNNIE A. JONES

Robert F. Collins
Nils R. Douglas
Lolis E. Elie
2211 Dryades Street
New Orleans 13,

(Signed) BY: Johnnie A. Jones

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

AFFIDAVIT

Personally appeared JOHNNIE A. JONES, Esquire, who, after being first duly sworn, deposed and said:

That he is one of the Attorneys for the defendant in the cause hereof; that he has prepared and read the foregoing pleadings, "Motion to Quash"; that, on information and belief, said pleadings are true and correct.

(Signed) Johnnie A. Jones
JOHNNIE A. JONES

SWORN TO and SUBSCRIBED before me this 15 day of January, 1962.

(Signed) Murphy W. Bell
NOTARY PUBLIC

(CONTINUATION, BILL OF EXCEPTION NUMBER ONE - NO. 42,200)

That on a subsequent day of Court a hearing was had contradictorily with the state on the said motions to Quash and that the court overruled and denied the said motions to Quash to which your defendant then and there objected and reserved a bill of exceptions to the information, the motion to Quash, the States answer to the motion to quash and to the Courts ruling denying the said Motion to Quash, and now your defendant perfects this formal bill of exceptions making a part of same the said information, the motion to Quash, the States answer to the motion to Quash, any evidence offered or testimony heard on the motion to Quash, the Courts ruling on same, and the entire record in these proceedings, and first submitting this their formal bill of exceptions to the District Attorney, now tenders the same to the court and prays that the same be signed and sealed by the judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.
JUDGE

::

...................BILL OF EXCEPTION NUMBER TWO...................

September 11, 1962 &
.......Dated October 10, 1962........Filed/October 11, 1962......

::

STATE OF LOUISIANA	NO. 42,200 - CRIMINAL SECTION
VS	19TH JUDICIAL DISTRICT COURT
B. ELTON COX	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

....

BILL OF EXCEPTION NUMBER TWO

BE IT REMEMBERED that at the conclusion of the trial of these cases the Judge found the defendant guilty of the offenses charged in cases numbered 42-200 and 42-202.

That on a subsequent day of the term of this court, before any judgment was entered on the said verdict rendered by the trial judge finding the defendant guilty as aforementioned and before any sentence had been imposed, defendant through counsel, filed a Motion for a New Trial, the said Motion for a New Trial reading as follows:

MOTION FOR A NEW TRIAL

NOW INTO COURT, through undersigned counsel comes B. ELTON COX, the defendant in the above entitled and numbered cause and moves the court that the verdict rendered herein be set aside and a New Trial ordered, for the following reasons:

-1-

That the Bills of Information are insufficient to charge a crime under L.S.A. R.S. 14:103.1 and 14:100.1.

-2-

That the convictions of defendant for violation of L.S.A. - R.S. 14:103.1 paragraph A subpart 1 and for violation of L.S.A. - R.S.- 14:100.1 denied defendant rights guaranteed to him under the first amendment to the Constitution of the United States.

-3-

That the convictions of defendant for violation of L.S.A. - R.S. 14:103.1 paragraph A subpart 1 and for violation of L.S.A. - R.S. 14:100.1 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

-4-

That the courts overruling of defendants objection to the segregated seating in the courtroom to which ruling defendant reserved a formal Bill of Exceptions was error and prejudicial to the defendant in that it denied him the right to a fair trial guaranteed to him by Article I Section 6 of the Constitution of the State of Louisiana. Said error further denied defendant the equal protection of the laws and due process of law guaranteed to him by the first section of the Fourteenth Amendment to the Constitution of the United States.

-5-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that they were enacted for the specific purpose and intent to implement and further the states policy of enforced segregation of races.

-6-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that they were arbitrarily, capriciously and discriminately enforced against persons peacefully, exercising their rights of freedom of speech in protest against racial segregation.

-7-

That the statutes under which defendant is convicted and the Bills of Information filed thereunder are unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statutes could not constitutionally be construed to cover the activities sought to be punished by the Louisiana Courts.

-8-

That the judgments are contrary to the law and the evidence in that there is no evidence to support a finding of guilt under either statute thus violating defendant's rights under the Due Process Clause of the Fourteenth Amendment.

-9-

That the judgments are unconstitutional in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that it is constitutionally impossible to charge and convict a defendant for disturbing the peace when the body of the statute prohibits crowding or congregating"...under circumstances such that a breach of the peace may be occasioned thereby".

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court direct to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause, if any he has, why a New Trial should not be granted in these proceedings.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans 13, Louisiana

OF COUNSEL:

CARL RACHILIN
280 Broadway
New York, New York

(Signed) BY: Nils N. Douglas

MURPHY W. BELL
971 South 13th St.,
Baton Rouge, La.

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally came and appeared:

NILS R. DOUGLAS

who after first being duly sworn did depose and say that he is the attorney in the above matter and all the allegations herein contained are true and correct.

(Signed) Nils R. Douglas

NILS R. DOUGLAS

SWORN TO AND SUBSCRIBED

BEFORE ME THIS _____ DAY

OF __________, 1962

NOTARY PUBLIC

ORDER

CONSIDERING the foregoing Motion For A New Trial, IT IS ORDERED that the Honorable Sargent Pitcher, Jr., District Attorney for the 19th Judicial District Court show cause on the _____ day of ______, 1962 at _______.M. why a New Trial should not be granted herein.

_______ day of ________, 1962

Baton Rouge, Louisiana

____

JUDGE

(CONTINUATION, BILL OF EXCEPTION NUMBER TWO CASES 42-200 & 202)

The Court, after hearing the said Motion of the defendant for a New Trial, denied and overruled the same, and to such action of the court, counsel for the defendant then and there objected and reserved a formal bill of exceptions and counsel now perfects this his formal bill of exceptions to the overruling of the Motion for a New Trial and makes a part hereof the bill of information, the motion to quash, the Courts ruling overruling the motion to quash and any evidence offered or testimony heard on the trial of the cases on the merits, the motion for a New Trial, the courts ruling on the motion for a New Trial, and the entire record in these proceedings, and first submitting this his bill of exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.

JUDGE

................PER CURIAM TO BILL OF EXCEPTION NO. 2...............
......Dated October 19, 1962........Filed October 10, 1962........

STATE OF LOUISIANA	NO. 42,200 - CRIMINAL SECTION
VS	19TH JUDICIAL DISTRICT COURT
B. ELTON COX	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

PER CURIAM

With regard to the objection of the accused to the segregated seating in the courtroom, the Court on its own order turned over approximately three-fourths of the seats in the courtroom to members of the colored race leaving approximately one-fourth of the courtroom for members of the white race. Notwithstanding this, counsel urges that this denied the accused a fair trial. The transcript of the record of trial will speak for it-itself in this regard.

Finally, the wisdom of segregating the races at the time of this trial when racial tension had been occasioned by the activities of the accused, whether in pursuit of freedom of speech or not, is beyond question. Indeed, it insured the accused a fair trial and was a step to preserve order in the court, for which this judge is responsible.

Baton Rouge, Louisiana, this 10th day of October, 1962.

(Signed) Fred A. Blanche, Jr.
JUDGE, 19TH JUDICIAL DISTRICT COURT

BILL OF EXCEPTION NUMBER THREE

Dated October 10, 1962 .... Filed September 11, 1962 & October 10, 1962

STATE OF LOUISIANA
VS
B. ELTON COX

NO. 42,200 - CRIMINAL DOCKET
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

BILL OF EXCEPTION NUMBER THREE

BE IT REMEMBERED that at the conclusion of the trial of these cases the defendant was found guilty on informations numbered 42-200 and 42-202.

That on a subsequent day of the term of this court, before any judgment was entered on the said verdict rendered by the Judge finding him guilty and before any sentence had been imposed defendant through counsel filed a Motion in Arrest of Judgment, the said Motion in Arrest of Judgment reading as follows:

MOTION IN ARREST OF JUDGMENT

NOW INTO COURT, after verdict against B. ELTON COX, and before sentence B. ELTON COX, through undersigned counsel, and moves the Court here to Arrest Judgment herein and not to pronounce the same because of manifest errors in the record appearing to-wit:

-1-

That at the beginning of the trial (Transcript Page 4) attorney Johnny Jones moved for the record to show that Murphy Bell, Attorney, was associated on the case with him.

That the court ordered a minute entry to that effect.

That Attorney Jones also asked for the same record to show that the courtroom was segregated to which request the District Attorney objected and to which the court replied:

> "Also let the record show that it has been the practice and custom in the East Baton Rouge Parish Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white and let the record especially show that the judge in this case ordered that half of the seats that were formerly reserved and available for white people are now being occupied and filled by colored people".

That on Wednesday, January 31, 1962 (transcript page 278) Johnny Jones renewed his objection to the segregated courtroom, in the following words:

> "Your Honor, I want to renew our objection about court being segregated and I want to reserve a formal bill".

To which the court replied:

> "Well, I just don't think it makes any difference I don't know if he has got any right to a bill on it or not, but I will let him perfect on it, if he wants to".

Then after some discourse between Mr. Pitcher and Mr. Jones the court said:

> "Let it stand as it is".

The above statements are held by counsel to constitute a correct reserving of an objection and the reserving of a Bill of Exceptions to the overruling of the Motion to Desegregate the Courtroom. If not so deemed, then it is our alternative position that the remarks of the court constitutes a part of the record which may properly be presented in review for error in a Motion in Arrest of Judgment. Thus the record shows on its face that defendant was deprived of rights guaranteed him under the equal protection of the laws and due process of law clauses of the Fourteenth Amendment to the Constitution of the United States.

-2-

That the Bills of Information are insufficient to charge a crime under L.S.A.-R.S. 14:103.1 and 14:100.1.

-3-

That the convictions of defendant for violations of L.S.A.-R.S. 14:103.1 paragraph A subpart 1 and for violation of L.S.A.-R.S. 14:100.1 denied defendant rights guaranteed to him under the first amendment to the Constitution of the United States.

-4-

That the convictions of defendant for violation of L.S.A.-R.S. 14:103.1 paragraph A subpart 1 and for violation of L.S.A.-R.S. 14:100.1 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

-5-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that they were enacted for the specific purpose and intent to implement and further the states policy of enforced segregation of races.

-6-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that they were arbitrarily, capriciously and discriminately enforced against persons peacefully exercising their rights of freedom of speech in protest against racial segregation.

-7-

That the statutes under which defendant is convicted and the Bills Of Information filed thereunder are unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statutes could not constitutionally be construed to cover the activities sought to be punished by the Louisiana Courts.

-8-

That the judgments are contrary to the law and the evidence in that there is no evidence to support a finding of guilt under either statute thus violating defendants rights under the Due Process Clause of the Fourteenth Amendment.

-9-

That the judgments are unconstitutional in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that it is constitutionally impossible to charge and convict a defendant for disturbing the peace when the body of the statute prohibits crowding or congregating"...under circumstances such that a breach of the peace may be occasioned thereby.

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause, if any he has, why a Motion in Arrest of Judgment should not be granted in these proceedings.

ROBERT F. COLLINS

NILS R. DOUGLAS

LOLIS E. ELIE
2211 Dryades St., N. O. La.

(Signed) BY Nils R. Douglas

MURPHY W. BELL
971 South 13th St., B. R. La.

OF COUNSEL:

CARL RACHLIN

280 Broadway

New York, New York

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally came and appeared:

NILS R. DOUGLAS

who after first being duly sworn did depose and say that he is the attorney in the above matter and all the allegations herein contained are true and correct.

(Signed) Nils R. Douglas
NILS R. DOUGLAS

SWORN TOAND SUBSCRIBED
BEFORE ME THIS _____ OF
_____________, 1962.

____
NOTARY PUBLIC

ORDER

CONSIDERING the foregoing Motion in Arrest of Judgment, IT IS ORDERED that the Honorable Sargent Pitcher, Jr., District Attorney for the 19th Judicial District Court show cause on the _________ day of ____________, 1962 at ______.m. why a Motion in Arrest of Judgment should not be granted herein.

____

JUDGE

(CONTINUATION, BILL OF EXCEPTION NUMBER THREE - CASES 42-200 & 42,202)

The Court after hearing the said Motion in Arrest of Judgment of the defendant, denied and overruled the same, and to such action of the Court, counsel for the defendant then and there objected and reserved a formal bill of exceptions, and now counsel perfects this his formal bill of exceptions to the overruling and denying of the said Motion in Arrest of Judgment and makes a part hereof, the bill of information, the Motion to Quash, any evidence or testimony heard or offered on the trial of these cases on the merits, the Motion in Arrest of Judgment, the Motion For A New Trial, the Courts ruling on the Motion In Arrest Of Judgment, the Courts ruling on the Motion For a New Trial and the entire record in these proceedings and first submitting this his bill of exceptions to the District Attorney, now tenders the same to the court and prays the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided which is done accordingly this 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.

JUDGE

::

..............PER CURIAM TO BILL OF EXCEPTION NO. 3...............

......Dated October 10, 1962............Filed October 10, 1962....

::

STATE OF LOUISIANA	NO. 42,200 - CRIMINAL DOCKET
VS	19TH JUDICIAL DISTRICT COURT
B. ELTON COX	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

....

PER CURIAM

With regard to the objection of the accused to the segregated seating in the courtroom, the Court on its own order turned over approximately three-fourths of the seats in the courtroom to members of the colored race leaving approximately one-fourth of the courtroom for members of the white race. Notwithstanding this, counsel urges that this denied the accused a fair trial. The transcript of the record of trial will speak for itself in this regard.

Finally, the wisdom of segregating the races at the time of this trialwhen racial tension had been occasioned by the activities of the accused, whether in pursuit of freedom of speech or not, is beyond question. Indeed, it insured the accused a fair trial and was a step to preserve order in the court, for which this judge is responsible.

Baton Rouge, Louisiana, thos 10th day of October, 1962.

(Signed) Fred A. Blanche, Jr.

JUDGE, 19TH JUDICIAL DISTRICT COURT

BILL OF EXCEPTION NUMBER FOUR

Filed September 11, 1962

STATE OF LOUISIANA : NO. 42,200 - CRIMINAL DOCKET
VS : 19TH JUDICIAL DISTRICT COURT
B. ELTON COX : PARISH OF EAST BATON ROUGE
: STATE OF LOUISIANA

BILL OF EXCEPTION NUMBER FOUR

BE IT REMEMBERED that on January 29, 1962, at the beginning of the trial the following occurred:

Mr. Jones: Your Honor, I would like to move associate attorney Murphy Bell on the case with me.

The Court: All right.

Mr. Jones: I would like for the record to show that he is now being associated on the case.

The Court: Show a minute entry to that effect.

Mr. Pitcher: No objection.

Mr. Jones: I would also like the record to show that this case is one where the defendant is being charged for the protest of racial segregation and that within the Courthouse itself that the defendant is being tried in that racial segregation is being practised and that there are interested parties on the outside of court waiting----

Mr. Pitcher: I object to the remarks of counsel---

Mr. Jones:-- who are interested in the case and that there are seats vacant in the court which are being reserved for whites and that the Negro citizens who are interested in the case are not permitted to utilize these seats. I would like for that to be made a part of the record.

The Court: Also, let the record show that it has been the custom in the East Baton Rouge Parish Courthouse for many, many years, and in the purpose of maintaining order on the courtroom, separate portions are placed in the court room for both colored and white, and let the record especially show that the judge in this case ordered that half of the seats that were formerly reserved and vailable for white people are now being occupied and filled by colored people.

BE IT FURTHER REMEMBERED, that on Wednesday January 31, 1962 the trial of these cases was resumed the following transpired:

ones: Your Honor, I want to renew our objection about the court being segregated and I want to reserve a formal bill.

itcher: If your Honor Please, I submit there is no ground for a bill because there is no evidence whatever of a segregated courtroom.

ourt: Well, I just don't think it makes any difference. I don't know if he has got any right to a bill on it or not, but I will let him perfect on it, if he wants to.

itcher: Well, my interpretation of the Criminal procedure If your Honor Please, is that a bill of exceptions is to preserve an adverse ruling of the court or a thought-to-be adverse ruling of the court to the party retaining the bill, and I don't see how any ruling--Your Honor has made no ruling whatsoever on a segregated courtroom. There is no evidence in the record to show it.

ones: On the first day Your Honor entered into the record that the Court was segregated and that it had been segregated over the years and/the purpose of
that

the segregation was to preserve peace and order. That was the custom. I think that came from the bench on that day.

tcher: Well, if that is true, then that time was the time to reserve the bill. It comes too late.

urt: Let it stand as it is.

tcher; All right.

l now perfects his bill of exceptions objecting to the ated character of the courtroom making the objection, the s of counsel for the defendant, the remarks of the District ey and the remarks of the trial judge, the ruling of the and the entire record a part of same and first submitting is bill of exceptions to the District Attorney, now tenders me to the court and prays the same be signed and sealed by dge of this court, pursuant to the statute made and provided, is done accordingly this 10th day of October 1962.

(Signed) Fred A. Blanche, Jr
JUDGE

......PER CURIAM TO BILL OF EXCEPTION NO. 4...............

ted October 10, 1962........Filed October 10, 1962......

LOUISIANA	NO. 42,200 - CRIMINAL DOCKET
	19TH JUDICIAL DISTRICT COURT
COX	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

PER CURIAM

With regard to the objection of the accused to the se-
seating in the courtroom, the Court on its own order
over approximately three-fourths of the seats in the court-
members of the colored race leaving approximately one-
of the courtroom for members of the white race. Notwith-
this, counsel urges that this denied the accused a fair
The transcript of the record of trial will speak for it-
this regard.

Finally, the wisdom of segregating the races at the time
trial when racial tension had been occasioned by the
ies of the accused, whether in pursuit of freedom of speech
is beyond question. Indeed, it insured the accused a fair
d was a step to preserve order in the court, for which
ge is responsible.

Baton Rouge, Louisiana, this 10th day of October, 1962.

(Signed) FRED A. BLANCHE, JR.

JUDGE, 19TH JUDICIAL DISTRICT COURT

..............BILL OF EXCEPTION NO. FIVE..................

ed October 10, 1962.........Filed September 11, 1962 &
October 10, 1962..........

LOUISIANA	:	NO. 42,200 - CRIMINAL DOCKET
	:	19TH JUDICIAL DISTRICT COURT
COX	:	PARISH OF EAST BATON ROUGE
	:	STATE OF LOUISINA

BILL OF EXCEPTION NO. 5

BE IT REMEMBERED that before entering on the trial of e, your defendant, having heard the information read and ing that they were each not guilty of the offense set out , filed the following Application For A Bill of Particulars:

APPLICATION FOR BILL OF PARTICULARS

Now into this Honorable Court, through his undersigned ls, comes B. ELTON COX, made defendant in the above entitled nbered cause, and before arraignment, pleads that he is un- is furnished with a Bill of Particulars upon the following, :

-1-

State when, where and how the defendant obstructed the free ent and normal use of a public sidewalk within the City n Rouge, thereby impeding, hindering and restraining passage .

WHEREFORE, your defendant, B. ELTON COX, prays that the Louisiana through the District Attorney, Parish of East uge, State of Louisiana, be ordered by this Honorable Court sh the said Bill of Particulars above requested; and that of same be made upon this defendant and that the Honorable Attorney for the Parish of East Baton Rouge, State of , be duly served with a copy hereof.

And your defendant prays for all such other relief to

he is or may be entitled.

Attorneys for Defendant:

JOHNNIE A. JONES

ROBERT F. COLLINS

NILS R. DOUGLAS

LOLIS E. ELIE
211 Dryades Street
New Orleans 13, Louisiana

BY ______________________________

hat on a subsequent day of Court a hearing was had con-
rily with the State on the said Application For a Bill of
rs and on the same day made a ruling overruling and denying
Application For A Bill of Particulars to which your defendants
there objected and reserved a Bill Of Exceptions, making
f the Bill Of Exception the Information, the Motion to Quash,
e's answer to the Motion to Quash, The Application For A
Particulars and the court's ruling overruling and denying the
lication, and your defendants now perfect this formal Bill
tion making a part of the same the said Information, the
o Quash, the State's answer to the Motion to Quash, any
offered and testimony which may have been heard on the
o Quash, the Court's ruling overruling and denying the said
o Quash, the Application For a Bill of Particulars and the
denial thereof and the entire record in these proceedings,
t submitting this their formal Bill of Exceptions to the
Attorney, now tenders the same to the court and prays
same be signed and sealed by the Judge of this Court, pur-
the Statute in such case made and provided, which is done
gly this 10th day of October, 1062.

(Signed) Fred A. Blanche, Jr.
JUDGE

F LOUISIANA
OF EAST BATON ROUGE

AFFIDAVIT

Personally appeared JOHNNIE A. JONES, Esq., who, after
irst duly sworn, deposed and said:

That he is one of the Attorneys for the defendant in the
ereof; that he has prepared and read the foregoing plead-
Application for Bill of Particulars"; that, on information
ief, said pleadings are true and correct.

____
JOHNNIE A. JONES

SWORN TO AND SUBSCRIBED before me this ______ day of
, 1962.

____
NOTARY PUBLIC

ORDER

Let Honorable SARGENT PITCHER, JR., District Attorney for
ish of East Baton Rouge, State of Louisiana, be, and he is
ordered to furnish the defendant, B. ELTON COX, the par-
requested in the foregoing application, within _____ days
e date hereof.

aton Rouge, Louisiana, January ______, 1962.

____
JUDGE

::

............DECREE OF THE SUPREME COURT....................

...............Filed March 26, 1962........................

::

F LOUISIANA : NO. 42,200 - CRIMINAL DOCKET
: 19TH JUDICIAL DISTRICT COURT
N COX : PARISH OF EAST BATON ROUGE
: STATE OF LOUISIANA

..........................:...............................

SUPREME COURT OF LOUISIANA
New Orleans

f Louisiana
B. Elton Cox March 23, 1962

lemmons, Sheriff,
ton Rouge Parish, Louisiana No. 46,079

- - - - - - - - - - -

State of Louisiana ex rel. B. Elton Cox applying for writs
as corpus, certiorari, mandamus and prohibition

- - - - - - - - - - -

efused. Relator has an adequate remedy by appeal.

/s/ EHMcC
/s/ JBF
/s/ JBH
/s/ WBH
/s/ FWH
/s/ FWS

- - - - - - - - - - -

PY, Clerk's Office, New Orleans
ourt of Louisiana - March 23, 1962
HAROLD A. MOISE, JR.
Deputy Clerk

DECREE OF THE SUPREME COURT

Filed March 27, 1962

STATE OF LOUISIANA	NO. 42,200 - CRIMINAL DOCKET
VS	19TH JUDICIAL DISTRICT COURT
B. ELTON COX	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

IN RE: STATE OF LOUISIANA EX REL. B. ELTON COX
APPLYING FOR WRITS OF HABEAS CORPUS,
CERTIORARI, MANDAMUS AND PROHIBITION

On reconsideration of our order dated March 23, 1962, this application concerned two cases bearing Nos. 42,200 and 42,201 of the docket of the District Court. As far as 42,201, we reinstated our order of March 23, 1962. In 42,200 a writ of certiorari is granted, and it is ordered that relator be released on bail during the pendency of proceedings in this Court, the amount of bail to be fixed by the District Judge.

/s/ Justice McCaleb
/s/ Justice Fournet
/s/ Justice Hamiter
/s/ Justice Hawthorne
/s/ Justice Hamlin

DECREE OF THE SUPREME COURT

Filed March 27, 1962

STATE OF LOUISIANA	NO. 42,200 - CRIMINAL DOCKET
VS	19TH JUDICIAL DISTRICT COURT
B. ELTON COX	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

STATE OF LOUISIANA EX REL B.
ELTON COX
VS.
BRYAN CLEMMONS, SHERIFF
EAST BATON ROUGE PARISH, LOUISIANA NO. 46,079

* *

IN RE STATE OF LOUISIANA EX REL. B. ELTON COX
APPLYING FOR WRITS OF HABEAS CORPUS, CERTIORARI,
MANDAMUS AND PROHIBITION.

* *

On reconsideration of our order dated March 23, 1962,

This application concerned two cases bearing Nos. 42,200 and 42,201 of the docket of the district court. As far as No. 42,201 is concerned, we reinstate our order of March 23, 1962.

In No. 42,200, a writ of certiorari is granted and it is ordered that relator be released on bail during the pendency of proceedings in this Court, the amount of bail to be fixed by the district Judge.

(Signed) E. HOWARD McCALEB
(Signed) JNO. B. FOURNET
(Signed) JOE B. HAMITER
(Signed) FRANK W. HAWTHORNE
(Signed) W. B. HAMLIN

A TRUE COPY CLERK'S OFFICE
NEW ORLEANS, March 26th, 1962
(Signed) V. J. COURVILLE
Clerk Supreme Court of Louisiana

CERTIFICATE

STATE OF LOUISIANA : 19th Judicial District Court
PARISH OF EAST BATON ROUGE : . . . .Clerk's Office. . . .

. . . .

I, Juanita M. McNeil, Deputy Clerk of the aforesaid Court, do hereby certify that the foregoing sixty-eight (68) pages contain a true, correct and complete transcript of all pleadings and documents filed, evidence adduced and proceedings had in said Court, the transcript of testimony already having been lodged in the Honorable Supreme Court, it being the same as in Suit No. 42,201, "State of Louisiana vs B. Elton Cox"; in the cause wherein State of Louisiana is the plaintiff and B. Elton Cox is the defendant, said cause being No. 42,200 on the docket of the Nineteenth Judicial District Court.

IN FAITH WHEREOF, witness my official signature and seal, at the City of Baton Rouge, Louisiana, this 29th day of October, A.D., 1962.

Juanita M. McNeil
Dy Clerk of Court

::

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NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA CRIMINAL

VS.

B. ELTON COX NO. 42-201

* *

SPECIAL APPEARANCE ONLY TO CHALLENGE JURISDICTION OF THE COURT OVER THE PERSON OF DEFENDANT

Now into court through undersigned counsel who makes this Special appearance only to challenge the jurisdiction of this court over the person of the defendant, comes B. Elton Cox who suggests:

1.) That he is not in the State of Louisiana.

2.) That he has not been arrested.

3.) That he is not out on bail.

4.) That he does not consent to the jurisdiction of this court over his person.

5.) That this court does not have jurisdiction over his person.

6.) That the District Attorney has not followed the method provided by law for securing jurisdiction over his person i.e. L.S.A.-R.S. 15:170.

7.) That the defendant specifically and particularly makes this appearance only to challenge the jurisdiction of this court over his person and specifically and particularly denies that he herewith pleads to the merits of this case.

8.) That defendant relies on, but not exclusively the following provisions of law:

   a.) L.S.A.-R.S. 15:170
   b.) L.S.A.-R.S. 15: 78

c.) United States Constitution Article 4, Section 2, Clause 2.

d.) 22 C.J.S. Criminal Law Section 107.

e.) 22 C.J.S. Criminal Law Section 143.

f.) 22 C.J.S. Criminal Law Section 144.

g.) 22 C.J.S. Criminal Law Section 147.

h.) State v. Smith 194 La. 1015, 195 So. 523.

WHEREFORE, your defendant prays that the District Attorney be required to pursue this matter as required by the laws of this State.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA
523-5197

BY:______________________
MURPHY W. BELL
971 SOUTH 13TH STREET
BATON ROUGE, LOUISIANA

OF COUNSEL:
CARL RACHLIN
38 PARK ROW
NEW YORK 38, NEW YORK

MSS
546 SEDFRE

Louisiana vs B. Elton Cox & Arthur Jelks, March - Dec. 1964
(Defamation)

Box 39
Folder 1

State Historical Society of Wisconsin

Please Retain Original Order

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA

VS. CASE NUMBER 44-288

B. ELTON COX CRIMINAL DOCKET

* *

MOTION IN ARREST OF JUDGMENT

NOW into Court, after verdict and before sentencing comes B. ELTON COX, through undersigned counsel, and moves the Court here to Arrest Judgment herein and not to pronounce the same because of manifest errors in the record to-wit:

I.

The record shows that L.S.A.-R.S. 14:47 and the Amended Bill of Information filed thereunder are unconstitutional in violation of defendant's rights guaranteed him by the Louisiana Constitution 1921 Article 1 Sections three and five, and the First and Fourteenth Amendments to the Constitution of the United States of America, freedom of speech and assembly.

II.

The record shows that L.S.A.-R.S. 15:247 upon which the prosecution partially rested in unconstitutional on its face and in its application said statute being in violation of rights guaranteed to the defendant by Article One Section Ten of the Constitution of the State of Louisiana 1921 and the Sixth Amendment to the Constitutionoof the United States of America.

III.

The record shows that the statute under which the prosecution is based is unconstitutional on its face in violation of the "fair notice" theory of the Sixth Amendment and the Fourteenth Amendment of the Constitution of the United States because it contains without statutory definition or judicial definition words of such ambiguous meaning and uncertain connotation as "hatred","contempt","ridicule", "public confidence" and "social intercourse". These words have no specialized, commonly acquired a commonly accepted meaning. These words are ambiguous to the extent that reasonable men may attribute one meaning to them and the court's another.

IV.

The record shows that the alleged defamatory words were privileged, being fair comment upon the acts of public men in their public capacity and with reference thereto.

V.

The record shows that the Amended Bill of Information herein does nothing more than set forth a conclusion of law and does not with certainty and sufficient clarity inform defendant of the nature and the cause of the accusation nor does it state sufficient facts to enable defendant to properly defend himself or offer a conviction under this charge in bar of a subsequent prosecution. All of this is in violation of defendant's rights under Article One Section Ten of the Constitution of the State of Louisiana 1921 and the Sixth Amendment to the Constitution of the United States of America.

VI.

The record shows that the court erred in denying defendants offer of the conviction in case number 44-287 in bar of prosecution in case number 44-288.

WHEREFORE, your mover prays that, a rule nisi issue of the Honorable Court directed to the Honorable Sam J. D'Amico, Acting District Attorney ordering him to show cause, if any he has, why this Motion in Arrest of Judgment should not be granted in these proceedings.

ROBERT F.COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

2211 Dryades Street
New Orleans, Louisiana

BY:_________________________

OF COUNSEL:

CARL RACHLIN, ESQ.
280 Broadway
New York, New York

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority personally came and appeared:

NILS R. DOUGLAS

who after first being duly sworn did depose and say that he is one of the attorneys in the above matter and that all of the allegations therein contained are upon information and belief true and correct.

____
NILS R. DOUGLAS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 6TH DAY
OF DECEMBER, 1962.

____
NOTARY PUBLIC

ORDER

CONSIDERING the foregoing motion in Arrest of Judgment IT IS ORDERED that the Honorable Sam J. D'Amico Acting District Attorney for the Nineteenth Judicial District Court show cause on the day of , 1962, why the Motion in Arrest of Judgment should not be granted herein.

JUDGE

Baton Rouge, Louisiana

, 19 .

Cox [illegible]

NINETEENTH JUDICIAL DISTRICT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA * NUMBER: 44, 287
VS. * CRIMINAL SECTION
B. ELTON COX *

* *

MOTION TO QUASH

NOW INTO COURT, through undersigned counsel comes B. ELTON COX accused herein and reserving all rights to file additional pleadings New Moves this Honorable Court to quash the Bill of Information for this:

1. That on November 23, 1964, the United States Supreme Court, in Garrison v. Louisiana 375 U.S. 900, 377 U.S. 936, restored for reargument, and decided November 23, 1964, declared:

"We hold that the Louisiana Statute, as authoritatively interpreted by the Supreme Court of Louisiana, incorporates constitutionally invalid standards in the context of criticism of the official conduct of public officials. For, contrary to the New York Times Rule, which absolutely prohibits punishment of truthful criticism, the Statute directs punishment for true statements made with "actual malice," see LSA- R.S. 14:48; State v. Cox,-La.-,-, 167 So. 2d 352, 355 (1964), handed down after the New York Times decision; Bennett, the Louisiana criminal code, 5 La. L. Rev. 6, 34 (1964). And "actual malice" is defined in the decisions below to mean "hatred, ill will or enmity or a wanton desire to injure...." 244 La., at 851, 154 So. 2d, at 423. The statute is also unconstitutional as interpreted to cover false statements against public officials. The New York Times standard forbids the punishment of false statements, unless made with the knowledge of their falsity or in reckless disregard of whether they are true or false. But the Louisiana statute punishes false statements without regard to that test of made with ill will; even if ill will is not established, a false statement concerning public officials can be punished if not made in the reasonable belief of its truth."

WHEREFORE MOVER PRAYS, that in view of Louisiana v. Garrison, decided by the U.S. Supreme Court on November 23, 1964, this case being on all fours with the same, and involving criticism of public officials; this case having been cited in the said Louisiana v. Garrison as the authority for Louisiana's interpretation of the statute on which this prosecution is based, that this prosecution be dismissed and the Bill of Information filed herein be quashed. And for all equitable relief in the premises.

By Attorneys:

MURPHY W. BELL

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LA.

MURPHY W. BELL
971 SOUTH 13TH STREET
BATON ROUGE, LOUISIANA

OF COUNSEL:

CARL RACHLIN, ESQ.
38 PARK ROW
NEW YORK 38, NEW YORK

MARVIN KARPATKIN, ESQ.
660 MADISON AVENUE
NEW YORK, NEW YORK

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA

VS. NUMBER 44-288

B. ELTON COX CRIMINAL DOCKET

* *

MOTION FOR A NEW TRIAL

NOW into Court through undersigned counsel comes B. ELTON COX, the defendant in the above entitled and numbered cause and shows the court that a great injustice has been done the accused and error committed to his prejudice and now moves the court that the verdict rendered herein be set aside and a New Trial ordered for the following reasons:

1.

That the verdict is contrary to the law and the evidence.

2.

That the ends of justice would best be served by the granting of a New Trial.

3.

That the charging of defendant B. ELTON COX with defamation of Judge Fred A. Blanche Jr., by indictment number 44-031 that the dismissal of the indictment after a Motion challenging the Grand Jury was filed; that the filing of Bill of Information number 44-288 charging the same offense; that the filing of an Amended Bill of Information after motions had been filed challenging the original Bill of Information all violated defendant's constitutional rights guaranteed by the Constitution of the State of Louisiana 1921 Article One Section Two and the Due Process and Equal Protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States of America.

4.

That the court erred in overruling the Motion to Desegregate the courtroom.

5.

The the court erred in refusing to permit the defense to introduce evidence to show that the courtroom was segregated.

6.

That the court erred in convicting defendant, said conviction being in violation of defendant's rights guaranteed by Article One Sections three and five of the Constitution of the State of Louisiana 1921 and the first and fourteenth Amendment to the Constitution of the United States of America.

7.

That the court erred in convicting defendant, said conviction being in violation of defendant's rights guaranteed by Article One Section Ten of the Constitution of the State of Louisiana 1921 and the Sixth Amendment to the Constitution of the United States of America.

8.

That the court erred in overruling the application for a Bill of Particulars to the Amended Bill of Information.

9.

That the court erred in refusing request of counsel to include as part of the trial record the incidents occuring during the course of the trial wherein a white university student was found in contempt of court for sitting in the spectator seats customarily reserved for Negro persons.

10.

That the court erred in overruling defendant's Motion to Quash the Amended Bill of Information.

11.

That the court erred in overruling counsel's Motion to avoid the amended Bill of Information in case number 44-288 which amended Bill was filed after District Attorney Sargent Pitcher, Jr., had recused himself from the case.

12.

That the court erred in overruling defendant's motion pleading the conviction in case number 44-287 in bar of prosecution in case number 44-288.

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Sam J. D'Amico acting District Attorney ordering him to show cause, if any he has, why a New Trial should not be granted in these proceedings.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans 13, Louisiana

OF COUNSEL:

CARL RACHLIN, ESQ.
280 Broadway
New York, New York

BY:____________________________

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority personally came and appeared:

NILS R. DOUGLAS

who after being first duly sworn did depose and say that he is one of the attorneys in the above matter and all of the allegations therein contained are on information and belief true and correct.

____
NILS R. DOUGLAS

ORDER

CONSIDERING the foregoing Motion For A New Trial IT IS ORDERED that the Honorable Sam J. D'Amico acting District Attorney for the Nineteenth Judicial District Court show cause on the day of , 19 at m., why a New Trial should not be granted herein.

Baton Rouge, Louisiana
, 19 .

JUDGE

SUPREME COURT OF LOUISIANA

NO. 46,395

STATE OF LOUISIANA
Plaintiff-Respondent

versus

B.ELTON COX
Defendant-Appellant

APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE, HONORABLE FRED A. BLANCHE, JR. JUDGE.

PETITION FOR REHEARING

ON BEHALF OF B. ELTON COX
Defendant - Appellant

* * * * * * * *

NO. 46,396

STATE OF LOUISIANA
Plaintiff-Respondent.

versus

B. ELTON COX
Defendant -Relator

IN RE: B. ELTON COX APPLYING FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION TO THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA.

PETITION FOR REHEARING
ON BEHALF OF B. ELTON COX

DEFENDANT - RELATOR

* * *

SUPREME COURT OF LOUISIANA

NO. 46,395

STATE OF LOUISIANA

versus

B. ELTON COX

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE, HONORABLE FRED A. BLANCHE JR., JUDG

PETITION FOR REHEARING
ON BEHALF OF B. ELTON COX DEFENDANT - APPELLANT.

STATE OF LOUISIANA

NO. 46,396

STATE OF LOUISIANA

versus

B. ELTON COX

IN RE: B. ELTON COX APPLYING FOR WRITS OF CERTIORARI, MANDAMUS, AND PROHIBITION TO THE NINETEENTH JUDICIAL DISTRICT COURT, PARIS OF EAST BATON ROUGE, STATE OF LOUISIANA

PETITION FOR REHEARING
ON BEHALF OF B. ELTON COX, DEFENDANT RELATOR

The petition of B. ELTON COX with respect represents that the opinion of this Honorable Court rendered on the 28th day of June 1963 is prejudicial to the interest of defendant-relator - appellant, and is contrary to the law and evidence and a rehearing should be granted herein for the following reasons, to-wit:

1.

That this Honorable Court erred in ruling that the Bills of Information in both cases were sufficient to apprise the accused of the nature and the cause of the accusation against him. The ruling of this Honorable Court is in conflict with the recent decision of State v. Smith 243 La. 656, 146 So. (2d) 152 handed down on November 5, 1962. See also dissent of Mr. Justice Mc Caleb in cases numbered 46,395 and 46,396 judgment rendered on June 28, 1963.

2.

That this Honorable Court erred in concluding that the trial judge correctly and constitutionally applied the law to the facts of both cases. Not only did the trial judge not consider the use of the clear and present danger test but instead his written judgment shows the test he did apply was an unconstitutional test. In the transcript of the record at page 545 Judge Blanche says in essence that it is inherently a breach of the peace for 1,500 Negroes to demonstrate in downtown Baton Rouge, their mere presence in numbers creates a disturbance of the peace. This error is one which is patent on the face of the record and can be urged at any time.

3.

That this Honorable Court erred in concluding that there was a fair trial in spite of the fact that the trial was held before a judge without a jury; in spite of the fact that the courtroom was segregated; and in spite of the fact that the judge demonstrated his inability to render fair judgment of the facts and the law by refusing to grant the motion to Desegregate The Courtroom.

4.

That this Honorable Court erred in concluding that both statutes met the constitutional standards of completeness with reference to informing the public as to what actions would and what actions would not be considered violations of L.S.A.-R.S. 14:100.1 and L.S.A.-R.S. 14:103.1. The case of State v. Vanicor 239 La. 357, 118 So. (2d) 438 (1960) is a case, from Louisiana, which is on all fours with the proposition that L.S.A. - R.S. 14:103.1 is unconstitutionally vague. The Vanicor Case standing alone as Louisiana authority without the help of any other authority state or federal is sufficient to reverse the disturbing the peace conviction.

WHEREFORE, petitioner prays that he be permitted to file this Application for Rehearing, and that a rehearing be granted herein, and after due proceedings had that the judgment rendere herein on the 28th day of June 1963, be annulled and set aside, and that there be judgment reversing the ruling of the trial court and annuling the convictions, and discharging the defendant.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans 13, Louisiana

OF COUNSEL:

CARL RACHLIN
280 Broadway
New York, New York

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared NILS R. DOUGLAS, who, after being duly sworn deposed and said that he is one of the attorneys for the petitioner in the above and foregoing petition; that a copy thereof, has this day been mailed to Messrs. Sargent Pitcher, Jr., District Attorney, for the Parish of East Baton Rouge, M. E. Culligan, Assistant Attorney General, and Jack P. F. Gremillion, Attorney General, by depositing same in the United States mail, postage prepaid, properly addressed, and that said application for rehearing is filed in good faith, and not merely for the purpose of delay.

NILS R. DOUGLAS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS_______DAY
OF JULY, 1963.

NOTARY PUBLIC.

96

GARRISON

WASHINGTON (AP)-THE SUPREME COURT BROADENED TO THE FIELD OF CRIMINAL LIBEL TODAY ITS PRONOUNCEMENT OF LAST MARCH THAT A PUBLIC OFFICIAL MUST PROVE ACTUAL MALICE BEFORE HE CAN COLLECT DAMAGES FOR DEFAMATORY FALSEHOODS RELATING TO HIS OFFICIAL CONDUCT.

AND, IN ANOTHER ACTION OF NATIONAL INTEREST, THE HIGH COURT REJECTED WITHOUT COMMENT AN ATTACK ON SCHOOL USE OF A PLEDGE OF ALLEGIANCE TO THE FLAG CONTAINING THE PHRASE "UNDER GOD."

THE RULING AS TO FREEDOM OF EXPRESSION AND THE CRIMINAL FIELD CAME IN A UNANIMOUS DECISION WHICH UPSET THE CONVICTION OF DISTRICT ATTORNEY JIM GARRISON OF NEW ORLEANS ON A CHARGE OF DEFAMING EIGHT DISTRICT JUDGES THERE. GARRISON WAS FINED $1,000.

THE CHARGES AGAINST HIM DEVELOPED FROM HIS COMMENT WHEN THE JUDGES FROZE IN 1962 FUNDS WHICH GARRISON SAID HE NEEDED FOR A VICE INVESTIGATION. HE SAID THE JUDGES' ACTION RAISED "INTERESTING QUESTIONS ABOUT RACKETEER INFLUENCES."

JUSTICE WILLIAM J. BRENNAN, WHO WROTE THE COURT'S MAIN OPINION, POINTED TO LAST MARCH'S LANDMARK DECISION IN THE CASE OF A $500,000 LIBEL SUIT BY POLICE COMMISSIONER L. B. SULLIVAN OF MONTGOMERY, ALA., AGAINST THE NEW YORK TIMES AND FOUR NEGRO CLERGYMEN.

IT WAS IN THIS CASE THAT THE COURT HELD THAT A PUPLIC OFFICIAL MUST PROVE ACTUAL MALICE BEFORE HE CAN COLLECT LIBEL DAMAGES.

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WASHN--ADD GARRISON (96)

BRENNAN'S OPINION SAID THAT THE COURT TODAY HAD TO DECIDE "WHETHER IN VIEW OF THE DIFFERING HISTORY AND PURPOSES OF CRIMINAL LIBEL, THE NEW YORK TIMES RULE ALSO LIMITS STATE POWER TO IMPOSE CRIMINAL SANCTIONS FOR CRITICISM OF THE OFFICIAL CONDUCT OF PUBLIC OFFICIALS."

C7124OPES 11/23

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WITH GARRISON

NEW ORLEANS (AP)-DIST. ATTY. JAMES JIM GARRISON SAID TODAY THE U.S. SUPREME COURT'S DECISION IN HIS CASE SHOULD BE A LEGAL LESSON TO LOUISIANA'S TOP JUDICIAL FIGURES ON THE RIGHTS OF CITIZENS.

THE SUPREME COURT TODAY OVERTURNED HIS CONVICTION ON A CHARGE OF DEFAMING EIGHT NEW ORLEANS JUDGES.

"IT IS UNFORTUNATE THAT THE TTORNEY GENERAL OF LOUISIANA, WHO FILED THE CHARGES OF DEFAMATION, THE TRIAL JUDGE WHO TRIED THE CASE, AND THE SUPREME COURT OF LOUISIANA, WHICH TO A MAN AFFIRMED THIS UNCONSTITUTIONAL CONVICTION, DID NOT SHARE MY FAITH IN THE UNITED STATES CONSTITUTION," HE SAID.

"...THEIRS IS SUPPOED TO BE THE BUSINESS, NOT MERELY OF KNOWING THE LAW, BUT OF MAKING JUSTICE," THE DISTRICT ATTORNEY SAID.

C7246PES

Supreme Court of Louisiana

No. 47018

STATE OF LOUISIANA

Versus

B. ELTON COX
ARTHUR JELKS

Appeal from the Nineteenth Judicial District Court, Parish of East Baton Rouge; the Honorable Fred S. LeBlanc, Judge.

HAWTHORNE, J.

Defendant-appellant B. Elton Cox, charged in a bill of information bearing No. 44,287 on the docket of the Nineteenth Judicial District Court for the Parish of East Baton Rouge with the crime of defamation denounced by R.S. 14:47, was tried, convicted, and sentenced by the court to be confined in the parish jail for one year, to pay a fine of $1000.00, and in default of payment of the fine to be confined in the parish jail for an additional year.[1]

The bill of information charges that the accused violated R.S. 14:47 in that he "did maliciously publish and express to parties other than the person defamed statements which tended to expose Judge Fred A. Blanche, Jr., to hatred, contempt, and ridicule, and to deprive him of the benefit of public confidence and social intercourse; said publication and expression being oral and to the effect that it was common knowledge that the oppressed Negroes who appeared in Judge Blanche's court had to pay a fee which inured to Judge Blanche's benefit to keep from going to the penitentiary * * *."[2]

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[1] Appellant Cox was charged jointly with Arthur Jelks, [illegible] was severed.

[2] The accused was charged also with defamation in a bill of information bearing No. 44,288 on the docket of the district court, in [illegible]

R.S. 14:47 reads thus:

"Defamation is the malicious publication or expression in any manner, to anyone other than the party defamed, of anything which tends:

"(1) To expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse;

"* * *"

Appellant's first contention is that Louisiana's defamation statute is unconstitutional per se as a violation of the freedom of speech guaranteed by the First Amendment to the Constitution of the United States. This issue has already been decided adversely to appellant's contention in the cases of State v. Webster, 245 La. 523, 159 So.2d 140, and State v. Moity, 245 La. 546, 159 So.2d 149, both of which cite and rely on decisions of the United States Supreme Court and other courts.3

Appellant's next contention is that, in the light of the holding of the Supreme Court of the United States in New York Times Co. v. Sullivan, 84 S.Ct. ——, 11 L.Ed.2d 686, the Louisiana statute as applied to criticism of a public official is in any event unconstitutional as a violation of freedom of speech.

In the New York Times case the Supreme Court was considering Alabama law dealing with civil libel. Here we are concerned with a criminal statute defining and denouncing the crime of defamation, for a conviction of which all essential elements of the crime, malice being one, must be proved beyond a reasonable doubt.

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2. (cont'd) language identical with that of the bill in the instant case except that it charged the accused with defaming the district attorney. As will be set out fully later, stipulations were made which, in effect, made the two cases one. Defendant was adjudged guilty in both cases on the same evidence, and received the same sentence in each.

3. See also State v. Cunningham, 244 La. [illegible], 154 So.2d 400, and authorities cited.

Louisiana R.S. 14:49 grants to persons charged with the crime of defamation under R.S. 14:47 a qualified privilege under certain situations as there set forth, one of these being where the expression is upon the conduct of a person in respect to public affairs and is made in the reasonable belief of its truth.[4] The statute provides that in such a case actual malice must be proved regardless of whether the expression is true or false. The redactors' comment under the article explains that when a qualified privilege exists, no presumption of malice would arise.

Appellant argues that our criminal defamation article, R.S. 14:49(2), is inconsistent with the New York Times holding in that the criticism of the official conduct of public officials is privileged under our law only where it is a comment made in the reasonable belief of the truth. He says: "* * * No such condition was articulated by the U. S. Supreme Court which required proof of actual malice without regard to the reasonableness of the petitioners' belief in the truth of what they said. * * * This additional burden upon the defense has been eliminated by the U. S. Supreme Court. Since the New York Times case, in order to sustain any verdict of prosecution for defamation of a public official, civil or criminal, the plaintiff or the State must affirmatively prove actual malice, regardless of whether or not the defendant had a 'reasonable belief.'"

To support this argument appellant has quoted this portion of the Supreme Court decision in the New York Times case:

"The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' —

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[4] R.S. 14:49 pertinently provides:

"A qualified privilege exists and actual malice must be proved, regardless of whether the publication is true or false, in the following situations:

* * *

"(2) Where the publication or expression is a comment made in the reasonable belief of its truth, upon

"(a) The conduct of a person in respect to public affairs * * *."

that is, with knowledge that it was false or with reckless disregard of whether it was false or not. * * *"

This statement was made near the end of the court's discussion of whether those making *false* defamatory statements are entitled to the protection and the constitutional safeguards of the First Amendment. Under Alabama law the only defense to libelous statements was *truth*, and the right of fair comment was dependent upon truth of the libelous statements. The court was mainly concerned about making it clear that even those making *false* libelous statements are entitled to constitutional safeguards, but it was well understood throughout the opinion that only those false statements, honestly made or made in good faith, were within the court's discussion.

At the outset of the discussion the court observed of the Alabama law of libel:

"* * * Good motives and *belief in truth* do not negate an inference of malice, but are relevant only in mitigation of punitive damages if the jury chooses to accord them weight. * * *" (Italics here and elsewhere are ours.)

Again, the court stated:

"* * * A defense for erroneous statements *honestly made* is no less essential here than was the requirement of proof of guilty knowledge which, in Smith v. California, 361 U. S. 147, 4 L. ed. 2d 205, 80 S. Ct. 215, we held indispensable to a valid conviction of a bookseller for possessing obscene writings for sale. * * *"

Immediately after the quotation from the decision that the appellant relies on the court said: "* * * An oft-cited statement of a *like* rule, which has been adopted by a number of state courts, is found in the Kansas case of Coleman v. MacLennan, 78 Kan 711, 98 P. 281 (1908). * * *" In the quotation adopted from that decision the belief in truth as a prerequisite of the privilege is spelled out:

"* * * where an article is published and circulated among voters for the sole purpose of giving *what the defendant believes to be truthful information* * * * the article is privileged * * * and in such a case the burden is on the plaintiff to show actual malice * * *."

We cannot agree with appellant therefore that the New York Times case is authority for holding that a condition that the publication or expression must be made in the reasonable belief of its truth for the privilege to apply violates the constitutional safeguards of the First Amendment.

We view our statute as being fully in accord with the New York Times pronouncements, conceding that case of civil libel is applicable to our criminal defamation legislation, and as fully safeguarding those accused under it in conformance with the First Amendment. Our statute permits the qualified privilege to exist, regardless of whether the publication was true or *false*, when it is a comment made in the reasonable belief of its truth upon the conduct of a person in respect to public affairs, and in such case *actual malice* must be proved by the State. Our criminal statutory requirements for proving actual malice are in accord with those set out by the New York Times case for civil libel. Our statute is clearly constitutional when measured by the standards set out in the New York Times case to satisfy the First Amendment.

Assuming, arguendo, that there is no conflict between our legislation and the Times decision, appellant argues further on the basis of Mr. Justice Goldberg's concurring opinion in that case that the First Amendment affords citizens an absolute privilege to criticize official conduct. We are not prepared to go that far. In our opinion our statute is not repugnant to the First Amendment simply because it recognizes that the public have an interest in the maintenance of the public character of public men. Public affairs could not be conducted by men of honor, with a view to the welfare of the country, if attacks upon them could be made at will, destructive of their honor and character and were wholly without foundation. [illegible] statute sufficiently protects those honestly criticizing [illegible] officials as to their official conduct to satisfy the State [illegible] but it properly forbids unjustified malicious attacks upon them.

Another contention is that the district [illegible] failure to timely recuse himself denied to the accused due process and the equal protection of the laws. For a proper understanding of this contention it is necessary that we review certain steps in the [illegible] of the case as disclosed by the record filed in this court.

The defendant was charged with defamation in two bills of information, both filed on October 1, 1962, and both alleging the offense as having been committed on September 5. The charges are couched in identical language in the bills except that in one the accused is charged with defaming a judge of the district court and in the other with defaming the district attorney. In the case charging defamation of the district attorney, the district attorney properly recused himself, though the exact date of his recusation is not shown by the record. On October 17 a motion to recuse the district attorney was filed in the case in which the accused was charged with defaming the judge, and this motion was [illegible] on November [illegible]. It is not denied that by October 17, the date this motion was first filed, the district attorney had recused himself in the case in which he was the injured party, and that the incident in which defendant is alleged to have defamed the district attorney was the same incident as that in which defendant allegedly defamed the district judge.

The minutes of the court show that on November 27, two days before the case was fixed for trial, the motion to recuse the district attorney was taken up, argued, submitted, and taken under advisement by the court. After this motion was taken under advisement, a motion to desegregate the courtroom and the courthouse was taken up, argued, and overruled. Application for a bill of particulars was also argued and denied. A motion to quash was likewise argued and overruled. In addition an application for a change of venue was submitted without argument or evidence, and was denied. The district attorney or a member of his staff argued all of these various motions. After the court had ruled on these motions, the district attorney orally moved that he and his staff be recused, and this motion was granted by the trial judge. The court then appointed an attorney to conduct the prosecution in both cases. Moreover, as previously stated, the district attorney had at some time before October 17 recused himself in the case in which the accused was charged with defaming him. Members of his staff, however, had thereafter had that case fixed for trial, filed an answer to a motion for a bill of particulars, and amended the bill of information.

On this same day, November 27, it was noted in the minutes of the case of the defamation of the district attorney that special counsel had been appointed, and that by agreement of counsel for the State and counsel for the accused the preliminary motions to desegregate the courtroom, motion to quash, etc., were submitted to the court on the arguments heard in the "judge's case", with counsel for the defense reserving all objections and bills of exception which had been taken in this case. The court overruled all the preliminary motions, and objection was made to his rulings and a formal bill reserved as to all of the motions.

The trial of the case charging defamation of the judge was begun on November 29 and completed on November 30. On the latter date the accused was adjudged guilty. On this same day counsel for the State and counsel for the accused stipulated that all the evidence taken during the trial of the case in which the accused was charged with defaming the judge would be the same in the case in which he was charged with defaming the district attorney, and that all bills of exception reserved in the "judge's case" would be reserved in the "district attorney's case". Under this stipulation the case of defamation of the district attorney was submitted to the court, and the accused was adjudged guilty.

It will thus be seen from the face of the record that one case was tried on the merits and the other submitted on this same evidence; that the same bills of exception are by stipulation to be considered in each case; that the defamatory statements in both cases arose out of the same incident; that after the motion to recuse in the case charging defamation of the judge was submitted to the trial judge and taken under advisement, the district attorney and members of his staff appeared for the State and argued various exceptions, motions, and pleas, as set out above; that only after the judge had ruled upon these motions and exceptions did the district attorney ask to be recused. Furthermore, in the case charging defamation of the district attorney, after his recusation members of his staff actually appeared and took steps in the prosecution of that very case.[5] The case charging the defendant with defamation of the district attorney was submitted on the evidence taken in the case charging defamation of the judge, and a verdict of guilty was rendered on that evidence — evidence which included, according to briefs filed in this court both by the defense and by the State, testimony by the district attorney.

Under these circumstances it is perfectly patent that the cases were treated as one for the purpose of trial and verdict, that a conviction in the case in which the defendant was charged with defaming the judge was tantamount to a conviction in the case in which he was charged with defaming the district attorney, and that the personal interest of the district attorney in one was as great as in the other.

The district attorney was here confronted with an accused who had allegedly made statements which defamed his character; he was the injured party. A sincere and conscientious public official like District Attorney Pitcher would naturally be outraged by the alleged defamatory statements, as would any person having his good reputation. He would naturally feel that a conviction of the accused would be a public vindication of the wrong done him, and he would have a great personal interest in seeing that the accused was convicted. He appeared at certain stages of this prosecution as

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[5] Recusation of district attorney recuses his assistants. State v. Buhler, 132 La. 1065, 62 So. 145.

[illegible] prosecutor and appeared later as a prosecuting witness with a personal interest. The two roles are incompatible. See State v. Jones, 306 Mo. 437, 268 S.W. 83; State v. Nicholson, 7 S.W.2d 375 (Mo. App.).[6] In our opinion the Missouri courts take the proper view of this matter.

Article 310 of the Code of Criminal Procedure makes it mandatory that the district judge recuse the district attorney where any of the causes set forth in the article exist. This article provides that where such causes exist, "Any district attorney shall be recused by the judge in criminal cases * * *". This court construed the cause for recusation set forth in Subsection (3) of the article to be applicable to cases where the district attorney had a personal interest in convicting the accused. State v. Tate, [illegible] La. 1006, 171 So. 108. In State v. Marcotte, 229 La. 539, 86 So.2d this Court concluded that the Tate case was full authority for the principle "that when the district attorney is personally interested in gaining a conviction, his interest is adverse to that of the State, as the State demands no victims, seeking equal and impartial justice only, it being just as much the duty of the prosecution to see that no innocent man suffers as it is to see that no guilty one escapes".[7]

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[6] In State v. Jones the district attorney was personally involved in the incident out of which the charge arose. The court of Missouri stated that the trial judge had inherent power, independent of statute, to appoint a special prosecuting attorney when the district attorney was for any reason disqualified, and that his interest in the case made him disqualified. In State v. Nicholson the accused was charged with the unlawful sale of intoxicating liquor. The district attorney had sworn out a search warrant, had accompanied the sheriff on the search, and was a witness for the State. The Missouri court in holding the district attorney disqualified under these circumstances said:

> "* * * It is commendable for prosecuting attorneys to be deeply interested in enforcing the law and to use their utmost ability and knowledge to see that the state is properly represented, but it is also their duty to keep in mind that the duty of a prosecuting attorney is not that of a partisan [illegible], but it is his duty to treat the defendant fairly under all circumstances and to conduct trials on the part of the state in such a way as to leave no room for criticism as to the methods used in trying to secure convictions. It is much more desirable to retain confidence in the purpose of the courts and other officers to enforce the law by fair and just means than to try to secure convictions in all cases at all hazards. * * * There is usually no necessity for [illegible] the sheriff and may lay him open to the charge of allowing his zeal to warp his sense of fairness in his efforts to secure a conviction. * * *
>
> "Nothing will detract more from the proper enforcement of the law than for the people to be impressed that the courts or prosecuting officers are unfair in their treatment of those charged with the law's violation. * * *"

Article 557 of the Code of Criminal Procedure provides that no appellate court shall grant a new trial "unless in the opinion of the court * * * after an examination of the entire record it appears that the error complained of is * * * prejudicial to the substantial rights of the accused, or constitutes a substantial violation of a constitutional or statutory right". Because of the essential identity of the two cases, it was the mandatory duty of the Judge in the instant case to order the recusation of the district attorney when it was disclosed to him that the district attorney was, in effect, an injured party in both cases and had a personal interest in securing the conviction; and the Judge's failure to do so was a substantial violation of the constitutional and statutory rights of the accused to the fair and impartial trial guaranteed by the Constitutions of this state and the United States.

It is true that at the time the district attorney voluntarily recused himself after he or his staff had taken numerous steps in the prosecution, the accused objected to such recusation. But the constitutional and statutory rights of the accused had already been violated, and the objection did not have a retroactive effect of waiving those rights already prejudiced.

Since we have concluded that the accused is entitled to a new trial, we find it unnecessary to discuss the various other contentions made in brief and argument on this appeal, as the circumstances giving rise to those contentions may not occur on a subsequent trial.

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[7] The writer of the instant opinion dissented in State v. Marcotte, pointing out that he did not subscribe to the holding of this court in State v. Tate. As observed by the footnote in the Marcotte case, however, the holding in the Tate case is now the established jurisprudence of this court.

For the reasons assigned the conviction and sentence are annulled and set aside, and the case is remanded to the district court for a new trial.[4]

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[4] In this court the "district attorney's case" was consolidated with the instant case for the purpose of argument, but we have rendered a separate decree therein. See Case No. 17,[illegible] on our docket, this day decided.

MONDAY JU[illegible] 1964

Supreme Court of Louisiana

No. 47019

STATE OF LOUISIANA

Versus

B. ELTON COX
ARTHUR [illegible]

Appeal from the Nineteenth Judicial District Court, Parish of East Baton Rouge; the Honorable Fred A. LeBlanc, Judge.

[illegible], J.

For the reasons assigned in the case of State of Louisiana v. B. Elton Cox, No. 47,018 on the docket of this court, this day decided, the conviction and sentence are annulled and set aside, and the case is remanded to the district court for a new trial.

SUPREME COURT OF LOUISIANA

Nos. 47018 and 47019

STATE OF LOUISIANA,
Appellee,
versus
B. ELTON COX,
Appellant.

Appeal from the Criminal Section of the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana, Honorable Fred S. LeBlanc, Judge, Presiding.

Nos. 44,287 and 44,288

ORIGINAL BRIEF ON BEHALF OF APPELLANT

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SUPREME COURT OF LOUISIANA

Nos. 47018 and 47019

STATE OF LOUISIANA,
Appellee,
versus
B. ELTON COX,
Appellant.

Appeal from the Criminal Section of the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana, Honorable Fred S. LeBlanc, Judge, Presiding.

Nos. 44-287 and 44-288

ORIGINAL BRIEF ON BEHALF OF APPELLANT

Statement of Jurisdiction

Appellant, B. Elton Cox, was found guilty of the crime of defamation of Judge Fred A. Blanche, Jr. and District Attorney Sargent Pitcher, Jr., as such crime is defined by Articles 47-50 of the Louisiana Criminal Code, L. S. A.—R. S. 14:47-50, on November 30, 1962 (R. 8[1]). On January

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[1] Unless otherwise indicated, all record references, prefixed by R., are to the record in No. 47018, which was case No. 44,287 below, the case involving the conviction for defamation of Judge Blanche. On November 30, 1962, counsel for the State and counsel for the accused stipulated that in No. 47019, case No. 44,288 below, the case involving the conviction for defamation of District Attorney Pitcher, all of the evidence taken in No. 44,287 would be the same in No. 44,288, and all of the bills of exception reserved to the defendant in No. 44,287 would be likewise reserved in No. 44,288. R. 6 [Pitcher]. Consequently there was only one trial, and citations to the transcript of the testimony taken by court reporter Betty Brady will be prefixed by Tr.

4, 1963 the accused was sentenced by the Court to pay a fine of $3,000 and costs, or in default of payment thereof to be confined in the Parish Jail for one year, and in addition thereto to be confined in the Parish Jail for one year (R. 10[2]). Within the delay allowed by law he moved for an appeal to the Supreme Court of Louisiana (R. 11[3]). Therefore, under Article VII, Section 10 of the Louisiana Constitution, this Honorable Court has jurisdiction of this appeal.

Statement of the Case

Defendant-Appellant, The Rev. B. Elton Cox, is a Field Secretary for the Congress of Racial Equality (CORE). On September 4, 1962, in Baton Rouge, Louisiana, in the Nineteenth Judicial District of this State, the Rev. Cox addressed a meeting at the Bethel A.M.E. Church. The meeting was sponsored by the N.A.A.C.P. for the purpose of announcing further plans to integrate the public schools of East Baton Rouge Parish (Tr. 4). In short, it was a Civil Rights meeting.

The Rev. Cox spoke for anywhere from 15 minutes, (Tr. 22) to "about an hour," (Tr. 133), depending upon whose estimate you accept. The complete contents of this speech are revealed nowhere in the transcript of the trial. Prosecution witnesses roughly agreed, however, that "in substance" the Rev. Cox named Judge Blanche and District Attorney Pitcher as the recipients of "fees" or bribes from "oppressed Negroes" as consideration for keeping such Negroes, apparently defendants in various criminal proceedings, from going to the state penitentiary. Defense witnesses testified that any such remarks by the defendant were made in general terms, i.e., as to "certain" judges and district attorneys but without identifying any particular ones. Defense witnesses testified further that Judge Blanche and District Attorney Pitcher were referred to in the speech but only in praiseworthy, or at worst sarcastically laudatory, terms. (Tr. 91-92, 95-96, 129).

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[2] Identical sentence was imposed for the conviction for defamation of District Attorney Pitcher. R. 8 [Pitcher].

[3] See also R. 10 [Pitcher].

There was also testimony that any mention by the defendant of the receipt of fees or bribes was in terms of his having been so advised by Negro jail inmates on the occasion of his own prior incarceration. (Tr. 98-99, 109-110).

The Rev. Cox was tried before a judge without a jury and convicted on Nov. 30, 1962, in the Nineteenth Judicial District, of the crime of defamation of Judge Blanche and District Attorney Pitcher. District Attorney Pitcher handled the prosecution of the case until all preliminary preparation and motions were disposed of and then, two days before trial, recused himself (R. 6).

The trial adduced no proof that either Judge Blanche or District Attorney Pitcher had been damaged and no proof that defendant was motivated by actual malice or lacked a reasonable belief in the truth of his statements. Nonetheless, the trial court saw fit to impose the maximum penalty of one year in jail and $3,000 fine (or another year in jail).

ARGUMENT

I. Louisiana's Criminal Defamation Statute Is Unconstitutional on Its Face as a Violation of the First and Fourteenth Amendments.

(Bills of Exception No. 2, No. 7, No. 8)

A. L. S. A.—R. S. 14:47 Is Unconstitutional *Per Se* as a Violation of Freedom of Speech.

The free speech and free press guarantees of the First Amendment are applicable to the States through the Fourteenth Amendment. *Edwards* v. *South Carolina,* 372 U. S.

229, 235 (1963); *Speiser* v. *Randall,* 357 U. S. 513, 530 (1958) (cases collected in concurring opinion); *State* v. *Garrison,* 244 La. 787, 154 So. 2d 400, 413, prob. juris. noted, 375 U. S. 900 (1963). This "conception of liberty under the due process clause of the Fourteenth Amendment embraces the right of free speech." *Stromberg* v. *California,* 283 U. S. 359, 368 (1931).

That a state statute enforced by a state court constitutes "State action" which is subject to the Fourteenth Amendment's limitations cannot seriously be questioned. *N.A.A.C.P.* v. *Alabama,* 357 U. S. 449, 463 (1958); *Shelley* v. *Kraemer,* 334 U. S. 1, 14 (1948); *Nixon* v. *Herndon,* 273 U. S. 536 (1924).

The fact that the state statute at issue here is one for criminal defamation provides no insulation from scrutiny, for "libel [or slander, as the case may be] can claim no talismanic immunity from constitutional limitations. It must be measured by standards that satisfy the First Amendment." *New York Times Co.* v. *Sullivan,* 84 Sup. Ct. 710, 720 (1964).

Appellant was here tried and convicted for criminal defamation under L. S. A.—R. S. 14:47. He not only is forevermore stigmatized as a criminal but faces the prospect of at least one and perhaps two years in jail. This harsh deprivation of appellant's liberty resulted from his exercise of liberty, the right to speak freely.

The United States Supreme Court, in the *New York Times* case, *supra,* made plain its abhorrence of criminal defamation statutes. Commenting upon the post-Revolutionary War Sedition Act of 1798, Stat. 596, which was never directly reviewed by the U. S. Supreme Court, Mr. Justice Brennan, writing for the majority, said that the Act, which made it a crime to utter defamatory statements about the U. S. Government and certain of its officials, "was inconsistent with the First Amendment" [84 Sup. Ct. at 724] and "the attack upon its validity has carried the day in the court of history" [*id.* at 723]. Then applying this judgment to the case at hand, the Supreme Court held:

> "There is no force in respondent's argument that the constitutional limitations implicit in the history of the Sedition Act apply only to Congress and not to the States. * * *
>
> "What a State may not constitutionally bring about by means of a criminal statute is likewise beyond the reach of its civil law of libel. * * *" *Id.* at 724.

Thus, since it follows that any criminal defamation statute would be held unconstitutional by the highest court in the land, it should similarly be invalidated by the highest court in this State.

To instead invoke the authority of the State, in all its power and majesty, to punish the defamer as a criminal is to exceed even those restrictions which, it may be argued, must necessarily be imposed upon one's freedom of speech. Even assuming that there must be a "balancing" between the First Amendment on the one hand, and the governmental interest on the other, there is no "clear and present danger" that the punishable language will bring about a "substantive evil" of a sort that a State has presumed power to prevent by suppression of the critical statement. Cf. *Dennis* v. *United States,* 341 U. S. 494, 506-507, 508-10 (1951); *Schenck* v. *United States,* 249 U. S. 47, 52 (1919). Nor does protection of reputation from a tendency to be exposed "to hatred, contempt, or ridicule" give rise to any "conflicting governmental interest" to which the guaranteed freedom must be compared and, if found wanting, yield. *Gibson* v. *Florida Legislative Comm.,* 372 U. S. 539, 546 (1963); *Konigsberg* v. *State Bar,* 366 U. S. 36, 50 n. 11 (1961).

The nonexistence of such interests as would justify the crime of defamation is reflected in the Louisiana criminal defamation statute which flatly provides for punishment where the speaker uses the proscribed language. It is an absolute rejection of the interest protected by the First Amendment without any attempt to identify or measure those competing values which we shall assume, for sake of argument, that a State may weigh. In essence, the interest favored by the First Amendment has been totally rejected, the opposing interest totally preferred.

Even if R. S. 14:47 set forth an accommodation of conflicting interests, assuming they were viable, any abridgment of First Amendment rights "must be viewed in the light of less drastic means for achieving the same purpose." *Shelton* v. *Tucker,* 364 U. S. 479, 488 (1960); *Speiser* v. *Randall, supra.* The conflicting interest here is the social desirability of providing a defamed public official with a means of obtaining some sort of redress to vindicate any injury to his reputation. This is precisely the problem considered by Mr. Justice Goldberg in his concurrence in the *New York Times* case, and he answered it most succinctly: "The public official certainly has equal if not greater access than most private citizens to media of communication." *Id.* at 739.

B. In the Light of the *New York Times* Case, L. S. A.—R. S. 14:47 as Applied to Criticism of a Public Official is in Any Event Unconstitutional as a Violation of Freedom of Speech.

In *New York Times Co.* v. *Sullivan, supra,* the United States Supreme Court has held that:

> "The constitutional guarantees require * * * a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." 84 Sup. Ct. at 726.

The *New York Times* decision was equally applicable to the individual petitioners therein, several Negro clergymen, as it was to the New York Times Company. Its rule is not limited to the protection of the constitutional rights of the press or even of communications media generally. *Id.* at 713, 717, 729. Thus this historic decision embraces every private individual as well. Therefore, the ambit of freedom of speech has been expanded so that anyone may criticize a public official in connection with his duties, *regardless of whether or not the criticism contains false statements of fact,* so long as the criticizer is not proven to have spoken with "actual malice".

Appellant respectfully submits that the present criminal defamation statutes of Louisiana are inconsistent with the *New York Times* holding. Appellant was prosecuted under L.S.A.—R. S. 14:47 which defines defamation. Since R. S. 14:47 contains no limitations whatsoever, it must be read with R. S. 14:49 which provides that:

> "A qualified privilege exists and actual malice must be proved, regardless of whether the publication is true or false, in the following situations:
>
> * * *
>
> (2) Where the publication or expression is a comment *made in the reasonable belief of its truth,* upon,
>
> (a) The conduct of a person in respect to public affairs; * * *." (Emphasis added.)

Thus under Louisiana law "reasonable belief" in the truth of the statement is a requisite to creation of the qualified privilege. No such condition was articulated by the U. S. Supreme Court which required proof of actual malice without regard to the reasonableness of the petitioners' belief in the truth of what they said. Under pre-*New York Times* Louisiana law, a conviction for defamation of a public official did not require proof of actual malice unless the defendant could first meet the test of "reasonable belief" in the truth of the statement. This additional burden upon the defense has been eliminated by the U. S. Supreme Court. Since the *New York Times* case, in order to sustain any verdict or prosecution for defamation of a public official, civil or criminal, the plaintiff or the State must affirmatively prove actual malice, regardless of whether or not the defendant had a "reasonable belief."

Therefore, R. S. 14:47, even when coupled with R. S. 14:49, is unconstitutional.

Even assuming, *arguendo,* that there is no conflict between R. S. 14:49 and the *Times* decision, we submit that R. S. 14:47 and 14:49 nevertheless violate appellant's freedom of speech, notwithstanding any requirement of proof of actual malice. As stated by Mr. Justice Goldberg in his concurring opinion, 84 Sup. Ct. at 735, "the First and Fourteenth Amendments to the Constitution afford to the citizen and to the press an absolute, unconditional privilege to criticize official conduct despite the harm which may flow from excesses and abuses."

We are not here concerned with defamatory statements concerning the *private conduct* of a public official or any conduct of a *private* citizen. Appellant has been convicted of having accused a judge and a district attorney, obviously public officials, of accepting bribes to keep Negroes out of the penitentiary (Tr. 203), conduct which is obviously at the core of their official duties.

It is imperative in our society that "the opportunity for free political discussion [be maintained] to the end that government may be responsive to the will of the people" [*Stromberg* v. *California, supra* at 369] and that we "assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people" [*Roth* v. *United States,* 354 U. S. 476, 484 (1957)]. The opportunity "to speak one's mind * * * on all public institutions" [*Bridges* v. *California,* 314 U. S. 252, 270 (1941)] must accommodate "vigorous advocacy" to be meaningful [*N.A.A.C.P.* v. *Button,* 371 U. S. 415, 429 (1963)]. Just as the Court in *New York Times* recognized the inevitability of error in free debate, and the protection of freedom of expression notwithstanding such errors in order to provide the "breathing space" needed "to survive" [*N.A.A.C.P.* v. *Button, supra* at 433], this Court, in addition to similarly abolishing the truth test as irrelevant, must also give cognizance to the inevitable inhibition of such vital political dialogue even where a test of actual malice is applied.

A test of actual malice is severely inhibiting to freedom of speech. Those citizens who, in Mr. Justice Black's words in his concurrence, 84 Sup. Ct. at 733, are "virile enough to publish unpopular views on public affairs and bold enough to criticize the conduct of public officials" are hard enough to come by at any time in history. To subject them to the fear that a jury might mistakenly or otherwise misunderstand their states of mind is to risk "the security of the Republic, the very foundation of constitutional government." *De Jonge* v. *Oregon,* 299 U. S. 353, 365 (1937). "If the constitutional standard is to be shaped by a concept of malice, the speaker takes the risk not only that the jury will inaccurately determine his state of mind but also that the jury will fail properly to apply constitutional standard set by the elusive concept of malice." *New York Times Co.* v. *Sullivan,* 84 Sup. Ct. at 737 n. 4 (concurring opinion, Goldberg, J.).

Criticism of public officials in their public duties should be accorded an absolute privilege. Appellant was here convicted of defaming a judge in connection with his official duties. Yet that self-same judge, under L. S. A.—R. S. 14:50 (1), would be immunized from suit against himself for defamation for any statement "made * * * in the course of his official duties." According to the Reporter's Comment "It is felt that in these situations the public welfare is better served by an entire freedom of expression." To have it otherwise:

> "would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. * * * In this instance it

> has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." *Gregoire* v. *Biddle,* 177 F. 2d 579, 581 (2d Cir. 1949).

Surely mutuality of protection should be conferred upon the private citizen (to whom, as a member of the society served, the judge or public official is ultimately responsible) in his criticism of official conduct, particularly the conduct which was the subject of the purported defamation:

> "The whole gamut of public affairs is the domain for fearless and critical comment, and not least the administration of justice." *Pennekamp* v. *Florida,* 328 U. S. 331, 365 (1946) (concurring opinion Frankfurter, J.)

Although there may be an academic distinction between defamation and contempt, the thin line separating them is virtually obliterated where the public official who is criticized is a judicial officer. Most relevant, and persuasive, therefore, is the line of United States Supreme Court decisions wherein the Court "held that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge or his decision." *New York Times Co.* v. *Sullivan,* 84 Sup. Ct. at 722, citing *Wood* v. *Georgia,* 370 U. S. 375 (1962); *Craig* v. *Harney,* 331 U. S. 367 (1947); *Pennekamp* v. *Florida, supra; Bridges* v. *California, supra.*

There is, of course, no significance to the fact that the *Times* decision dealt with a huge civil damage verdict whereas this Court has before it a criminal conviction except that the latter is, if anything, a more severe sanction and a surer means of gagging the private citizen who wishes to protest governmental conduct. The Supreme Court in *New York Times* v. *Sullivan* did not hesitate to declare unconstitutional the 1798 Sedition Act, that hasty and unwise product of the federalist-anti-federalist political hysteria which gripped our country during the early days of our history. It follows, the Supreme Court held, that the Alabama rule of civil liability was unconstitutional. *Supra* at p. 5.

Therefore, L. S. A.—R. S. 14:47 and 14:49 are unconstitutional to the extent that they apply to criticism of public officials in their public affairs.

II. Even if the Statute Is Valid on Its Face the Conviction Is Based Upon an Unconstitutional Application.

(Bills of Exception No. 2, No. 7, No. 8)

A. The Trial Court's Presumption of Malice is Unconstitutional as a Violation of Freedom of Speech.

In *New York Times Co.* v. *Sullivan,* the U. S. Supreme Court has held that the only condition upon which a public official has a cause of action for defamatory falsehood relating to his official conduct is if the statement was made with actual malice. Actual malice is defined as knowledge by the defendant that the statement was false or reckless disregard of whether it was false or not. 84 Sup. Ct. at 726. Mere negligence in failing to discover the falsity of the statements was ruled "constitutionally insufficient to show the recklessness that is required for a finding of actual malice." *Id.* at 730. The presumption of malice relied upon by the Alabama court was held "inconsistent with the federal rule" above. *Id.* at 728.

The trial court, in rendering its decision, found that there was:

> "no question that the remarks—I mean the fact, alleged fact, of the judge accepting fees illegally is a false fact, it is not true. The judge denied it, Mr. Pitcher denied it, there is no evidence it is true. There has been no justification shown here at all, *and malice is presumed. The statement is presumed to be malicious unless a justifiable motive for* making it is shown. There has been no justifiable motive

> for the making of this statement shown by the defense." (Tr. 205-06) (Emphasis added)

On the basis of the *New York Times Co.* v. *Sullivan,* defendant's conviction must, *a fortiori,* be reversed.

B. The Evidence is Constitutionally Insufficient for Failure of the State to Prove Actual Malice.

Just as did the United States Supreme Court, it is incumbent upon this Court "to review the evidence in the present record to determine whether it could constitutionally support a judgment" for defendant. See 84 Sup. Ct. at 728.

The transcript of defendant's trial fails to reveal any evidence or even any attempt by the State to introduce evidence of actual malice. To the contrary, proof was adduced by the defense that (1) defendant in his speech advocated nonviolence and expressed no hatred for the judge or district attorney, "he had to love them instead in order to be true to his concept of nonviolence" (Tr. 92); (2) defendant described Judge Blanche as "a pretty fair judge and it seems as though he wanted to exercise justice" (Tr. 95); (3) the general statements made by defendant about the acceptance of bribes by district attorneys and judges was based on information supplied to defendant by inmates of the state prison (Tr. 124-25, 130-31); (4) defendant characterized Judge Blanche and District Attorney Pitcher as "nice" men (Tr. 129) and Pitcher again as "a good man and that he loved him" (Tr. 138).

Not only is there no proof of actual malice, much less "the convincing clarity which the constitutional standard demands" [84 Sup. Ct. at 729], but defendant's reliance upon information provided by Negro inmates of the state prison is not unreasonable and can never be raised to the level of reckless disregard of the truth which the Supreme Court holds the Constitution requires for actual malice.

Although the trial court dismissed that source as unreliable (Tr. 202), it must be noted that the certain knowledge of whether or not the judge and the district attorney solicited bribes from Negroes to keep them out of prison rests only with the two officials and the Negroes involved. We reiterate: the constitutional question is not one of truth; it is whether or not the words were spoken with actual malice.

The evidentiary basis for the trial court's conviction of defendant is not only lacking in constitutional sufficiency. It fails even to conform to the statutory requirements of Louisiana law. There can be no dispute that the statements attributed to defendant relate to "the conduct of a person in respect to public affairs." As such they are qualifiedly privileged under L. S. A.—R. S. 14:49. Under that statute once the privilege arises (1) truth or falsity is irrelevant and (2) actual malice must be proved. See *State* v. *Garrison, supra.* As the statute implies, the burden of proof of actual malice is on the State. *State* v. *Lambert,* 188 La. 968, 178 So. 508 (1938).

Yet the trial court (1) treated truth as an issue, (2) presumed malice and (3) placed the burden of proving justifiable motive upon defendant (Tr. 205-06).

C. The Evidence Was Constitutionally Insufficient for Failure of the State to Prove Damage to Reputation.

Defendant was tried under a Bill of Information which recited the crime in terms of L. S. A.—R. S. 14:47 as having been statements which tended to expose the judge "to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse."

It requires no recitation of cases at this late date to establish that a necessary element for the commission of any crime is the doing of some wrongful act. Clark &

Marshall, *Crimes* § 4.00 at 176 (6th ed. 1958). Obviously it is not just the making of a statement which constitutes the wrongful act essential to commission of the crime of defamation in Louisiana; it must be a statement that carries the requisite impact of tending to expose to hatred, contempt, ridicule and the like.

The imperativeness of proof of such impact by the State in order to establish the commission of the crime was made clear by this Court in *State* v. *Garrison, supra*. The trial court permitted each of four allegedly defamed judges, over objection of the defendant, to testify to the reaction of the public to the defendant's criticisms. This Court held that:

> "We agree with the reasoning of the trial judge to the effect that when a person has been defamed, he has been exposed to hatred, contempt or ridicule (L. S. A.—R. S. 14:47) and that the person's testimony with respect to such exposure is proof of an essential ingredient of the crime charged—Defamation—and is not hearsay." 154 So. 2d at 425.

In the instant case not one scintilla of evidence was introduced by the State to demonstrate that either Judge Blanche's reputation or District Attorney Pitcher's reputation was actually damaged. Instead we have only the gratuitous conclusion by the trial court, lacking any support in the record, that:

> "no doubt about it, it [the remark of defendant] tended to hold him up to hatred and contempt and ridicule. Who would want to have anything to do with a judge that received money under those circumstances? You wouldn't want to be seen with him in daylight, or darkness either." (Tr. 209)

This speculation by the trial court is a make-weight argument, grossly in error as a matter of commonly-known fact. It is likely, considering the identity of the person making the accusation, that the charge of bribe-taking would simply not be believed by a substantial number of the community. For in Louisiana, as in Virginia, "the militant Negro civil rights movement has engendered the intense resentment and opposition of the politically dominant white community." *N.A.A.C.P.* v. *Button, supra,* 371 U. S. at 435. The supposedly defamatory statement here was made by one known for his active role in that movement, a person whom District Attorney Pitcher could call, in his direct testimony, a "Negro agitator" (Tr. 60-61) and "outside agitator" (Tr. 62) (the very people whom Justice Black in the *Times* case noted were the subject of so much hostility by opponents of integration, 84 Sup. Ct. 733). Apropos is Justice Black's analysis, *ibid.,* that:

> "Viewed realistically, this record lends support to an inference that instead of being damaged Commissioner Sullivan's political, social, and financial prestige has likely been enhanced by the Times' publication."

In the world of Judge Blanche and District Attorney Pitcher the words of defendant were devoid of any "impact" that can weigh "against the principles of the First Amendment." *Pennekamp* v. *Florida, supra,* 328 U. S. at 349. The dearth of proof at the trial stands as mute testimony to the undamaged reputations of Judge Blanche and District Attorney Pitcher and to the constitutional insufficiency of the evidence in support of a conviction for criminal defamation.

D. The Decision of This Court in *State of Louisiana* v. *Garrison*, *supra,* is Distinguishable From This Case.

1) The *Garrison* case *preceded* the Supreme Court decision in the *New York Times* case. Obviously anything inconsistent in *Garrison* must yield to *New York Times,* and *Garrison* is binding only to the extent that it is not modified by *New York Times.*

2) Garrison was a powerful public official criticizing other public officials, while Cox was a mere private citizen who presumed to so criticize. As Mr. Justice Goldberg's concurring opinion in the *New York Times* case noted: "The public official certainly has equal if not greater access than most private citizens to media of communication." *Id.* at 739. The *New York Times* case, in a sense, sought to minimize this imbalance by holding that a defamed public official had ample opportunity to obtain redress via his access to communications media, and allowing him legal redress was not socially necessary. But where both the defamer and the defamed are public officials, with relatively equal access to media, there is obviously no problem of protecting the weak citizen against the strong official.

3) It may be said that as an elected public official Garrison had a certain measure of *responsibility* to avoid uttering defamatory statements against any others, public officials or private citizens. The principal argument against the use of the grand jury presentment by District Attorneys is that it too often provides a vehicle for prosecutors to engage in irresponsible, gratuitous criticism without the necessity of obtaining an indictment. There is perhaps a greater social interest in compelling elected officials to cleave to the truth, at the risk of legal liability, than is the case for private citizens.

4) The last argument applies with even greater force to a District Attorney who presumes to criticize a Judge before whom he practices. In a sense Garrison's utterances sound more like contempt than defamation. There may very well be a greater social interest in restraining a prosecutor from calling a judge corrupt than in similarly restraining a private citizen.

5) As a matter of fact, Garrison may very well have damaged the reputation of some of the judges whom he criticized; the prosecution presented considerable testimony to such effect. But it is highly dubious if Cox's

criticism had the slightest effect on the reputations of Judge Blanche and Mr. Pitcher; and *no* testimony was offered on this point.

6) There is further factual distinction in terms of malice. Cox, as a CORE field worker, was dedicated to the nonviolent philosophy of loving his opponent; he was trained and committed to eschew malice, hatred and violence of any kind. How can he be guilty of "actual malice"? But Garrison was under no such philosophical and religious circumscription.

III. The Trial Court's Denial of Defendant's Motion to Desegregate the Courtroom and Courthouse Was an Unconstitutional Violation of Due Process and Denial of Equal Protection of the Law.

(Bills of Exception No. 3, No. 5, No. 7)

The criminal courtroom is on the third floor of the courthouse. It was segregated throughout the trial. All restrooms on the first, second and third floors were reserved "For White Only"; the lunchroom on the second floor was reserved "For White Only"; one restroom, in the basement, was open to Negroes (R. 57).

The trial, which was held on Nov. 29 and 30, was interrupted on the first day so that the judge could summarily summon before the bar and try for contempt a Negro woman spectator for sitting in the section reserved for white people (R. 103). The woman, Mrs. Pearl Lee George, was convicted and sentenced to a $100 fine or 30 days in jail, plus 10 days in jail (R. 106).

Such circumstances create an inherent barrier to that principle of fair trial which is implicit in the concepts of due process and equal protection of the laws imposed by the Fourteenth Amendment upon the administration of justice in State courts.

There is no longer any doubt that a courtroom which is racially segregated violates the Fourteenth Amendment as much as any other State-ordained racial segregation. In *Johnson* v. *Virginia,* 373 U. S. 61 (1963), a Negro had been convicted of contempt of court solely because he refused to comply with the judge's instruction to sit in that part of the courtroom reserved for Negroes. In a *per curiam* decision the conviction was reversed because "State-compelled segregation in a court of justice is a manifest violation of the State's duty to deny no one the equal protection of its laws." *Id.* at 62.

This is entirely in keeping with the extension of the prohibitions of the Fourteenth Amendment to all action of a State denying equal protection of the laws regardless of what State agency takes the action. *Shelley* v. *Kraemer, supra; Virginia* v. *Rives,* 100 U. S. 313 (1879).

> "A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. * * * Whoever, by virtue of public position under a State government * * * denies or takes away the equal protection of the laws, violates the constitutional inhibition. * * *" *Ex parte Virginia,* 100 U. S. 339, 347 (1880).

Here, of course, we are not directly confronted with the identical issue of the *Johnson* case, although *Johnson* will obviously compel a reversal of the conviction of Mrs. George. The issue here is rather whether a Negro who is tried in a racially segregated courtroom has been afforded due process and equal protection of the law.

There are three reasons, we submit, which compel a decision that appellant has been denied those fundamental rights: (1) a segregated courtroom is, in effect, a manifestation of prejudice of the trial court; (2) the administration of justice is tainted *per se* by segregation in the courtroom; and (3) by definition, in a racially segregated courtroom, a Negro defendant is not accorded equal status in the eyes of the law.

1. Under the authority of *Johnson* v. *Virginia* it is now unconstitutional to maintain a segregated courtroom. The trial of defendant herein was held, however, a few months *prior* to the *Johnson* decision. At the time of the trial there was no Louisiana statute *requiring* segregated courtrooms, despite a plethora of statutes compelling segregation in an infinite variety of public facilities and activities. See, *e.g.*, L. S. A.—R. S. 4:5; L. S. A.—R. S. 4:451; L. S. A. —R. S. 15:752; L. S. A.—R. S. 17:10; L. S. A.—R. S. 45; 1301-03. Therefore, the trial court was under no legal obligation to maintain a segregated courtroom and obviously did so voluntarily.

The State may well contend that tradition required that the courtroom be segregated. But "local tradition cannot justify failure to comply with the constitutional mandate requiring equal protection of the laws." *Eubanks* v. *Louisiana,* 356 U. S. 584 (1958).

Utter disdain for any legal safeguards to defendant that might accrue from desegregation was manifested in the opinions expressed at trial by the State's trial counsel, who indicated his attitude on the record:

> "we are not interested this morning in what the rights of the Negro people are * * *. What we are dealing with this morning are the rights of B. Elton Cox * * *. It doesn't make any difference whether we have Arabs, Turks or anything else sitting out there. That is a public gathering place and it is immaterial to the matter before the court as to who sits where * * *." (R. 115-16)

This view was apparently shared by the trial judge who observed that "we could have dummies sitting back there that wouldn't make any difference" (R. 120). Lack of awareness that from the viewpoint of the defendant's constitutional right to be tried in a desegregated courtroom, dummies would have been far preferable to a segregated courtroom underscores insensitivity to the nature and effect of racial segregation.

It is well to bear in mind Canon 3 of the Canons of Judicial Ethics of the American Bar Association:

> "It is the duty of all judges in the United States to support the federal Constitution and that of the state whose laws they administer; in so doing, they should fearlessly observe and apply fundamental limitations and guarantees."

2. The unconstitutional and immoral practice of racial segregation is absolutely inconsistent with the proper administration of justice. It taints the whole case even though it may not bear directly upon the decision-making process which determines the guilt or innocence of the accused. Even though the defendant himself may not have been personally subjected to segregated seating in the courtroom, the prevalence of the unconstitutional practice contaminated the entire trial.

In *Cassell* v. *Texas,* 339 U. S. 282 (1950), as an example, a Negro was convicted of murder in a Texas state court. Negroes had been purposefully excluded from the grand jury which returned the indictment but were not excluded from the trial jury which convicted him. The defendant was apparently guilty, and indeed Mr. Justice Jackson's dissent demonstrates how the *defendant* was not prejudiced, and that the excluded Negroes had statutory and equitable remedies of their own. He points out, however, that the defendant had successfully contended that the failure to give other Negroes an equal right to sit on the grand jury, *though not the defendant's right in the first instance,* had given the defendant the right not to be indicted by that grand jury. *Id.* at 299-300. Mr. Justice Jackson summarizes the decision of the Court as follows:

> "In setting aside this conviction, the Court is moved by a desire to enforce equality in that realm where, above all, it must be enforced—in our judicial

> system. But this conviction is reversed for errors that have nothing to do with the defendant's guilt or innocence, or with a fair trial of that issue." *Id.* at 299.

The State of Louisiana has exhibited a regard for the need for fairness and nondiscrimination in the administration of justice as by enacting statutes prohibiting interference with the administration of justice or influencing of any judge, juror, witness, or court officer, in the discharge of his duty. And in *State* v. *Goree,* 242 La. 886, 139 So. 2d 531 (1962), systematic exclusion of Negroes from the petit jury list was held to require setting aside the conviction of a Negro defendant.

It is but a small step to holding that unconstitutional segregation of the courtroom is such an impediment, real or apparent, to the fair administration of justice for a Negro defendant as to require reversal of a conviction obtained under such circumstances.

Assume that a courtroom systematically segregates spectators in accordance with their religion, political affiliation or national origin as by prohibiting Catholics, Democrats or persons of French ancestry from sitting where others may sit. Could such a segregated and blatantly unconstitutional atmosphere permit a fair trial under American standards of jurisprudence? No less is a fair trial possible where the unconstitutional segregation is in terms of race or color.

3. Racial segregation is, by definition, a badge of inferiority for the segregated Negro. See *Brown* v. *Board of Educ.*, 347 U. S. 483 (1954). It is the manifestation of a belief in the innate superiority of members of the white race over members of the Negro race. To perpetuate this immoral, unconstitutional treatment in a court of law where the accused who is on trial is a Negro, a member of the race discriminated against, brands that accused in the eyes of the judge, the prosecutor and the witnesses as

less than equal before the law, and, therefore, implicitly, as less deserving of that degree of impartiality and fairness which are the cornerstones of our judicial system.

On March 30, 1964 the United States Supreme Court, relying on *Johnson* v. *Virginia, supra,* held in the case of *Hamilton* v. *Alabama,* 32 U. S. L. Week 3342, that a similar badge of inferiority, similarly unconstitutional, was the paternalistic practice of addressing Negro persons by their first names. Of particular significance for this case is the fact that the scene of the flaunting of this emblem of past servitude which the Supreme Court struck down in *Hamilton* was a courtroom. The Supreme Court has announced, appellant respectfully urges, that whatever may be the standards, requirements, norms, or tolerances permitted elsewhere in States where racial segregation continues in one form or another, it is absolutely impermissible in any courtroom, and it will not be allowed to exist at the risk of having the slightest impinging effect upon the administration of justice.

IV. The Trial Court's Failure to Timely Grant Defendant's Motion to Recuse District Attorney Pitcher Is an Unconstitutional Violation of Due Process and Denial of Equal Protection of the Law.

(Bills of Exception No. 4, No. 7)

The allegedly defamatory statements were made in the Nineteenth Judicial District of Louisiana. The District Attorney for that District, Sargent Pitcher, Jr., is one of the two persons the defendant was convicted of having defamed. Defendant's statement referred to both men together in the same speech at the same time. Defendant was tried separately for the defamation of Judge Blanche. He was never separately tried for defaming the District Attorney, it being stipulated that the evidence in the Blanche trial would be binding in the Pitcher case.

The District Attorney voluntarily recused himself from the prosecution of his own defamation but refused to do so in the judge's case (R. 39). On October 17, 1962 defendant moved to recuse the District Attorney in this case (R. 25), which of course deals with defamation of the judge. On November 16, 1962, that motion was renewed as to the amended bill of information (R. 38). On November 27, 1962, the pending motions were argued (R. 4-6). These included, in the following order: (1) the motion to recuse the judges of the District—argued and overruled; (2) the motion to recuse District Attorney Pitcher—argued and decision reserved; (3) the motion to desegregate the courtroom and courthouse—evidence taken, argued and overruled; (4) the application for a bill of particulars to the amended bill of information—argued and denied; (5) the motion to quash the amended bill of information—argued and overruled; and (6) the application for change of venue—submitted without argument and denied. Only then did District Attorney Pitcher "voluntarily" recuse himself and his staff, causing the trial court to rule in effect that the motion to recuse the District Attorney was moot. Special trial counsel for the State was then appointed and two days later the trial was held.

Thus District Attorney Pitcher was able to handle the investigation of the case, prepare witnesses, prepare for trial, argue the foregoing motions and then, only two days before trial, recuse himself in an obvious attempt to spread the mantle of judicial fairness over all the proceedings. For an example of District Attorney Pitcher's personal participation, see pp. 111-123 of the Record, wherein Mr. Pitcher cross-examined defendant's witnesses on the motion to desegregate and objected, successfully, to the admissibility of virtually all the meaningful testimony offered on direct examination. All this occurred in a case where the defamatory words concerning the District Attorney were so inseparably intertwined with the defamatory words concerning the judge as to be one (see *e.g.,* Tr. 10, 32-33, 51, 55-56), and where, as a practical matter, the cases were treated as one for purposes of a trial and verdict.

Following the District Attorney's self-serving recusation at the close of the proceedings on November 27, the defendant of course objected to this self-immunizing device, sought to be applied only after the contagion of the District Attorney's self-interest in the case had irrevocably infected the fair administration of justice. The trial court overruled the objection and, in its per curiam, complained of the propriety of the objection after the defendant had "got what he wanted" (R. 92-93).

Canon 5 of the Canons of Professional Ethics provides in part that:

> "The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done."

The Canon then illustrates this role by pointing out that "the suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible." See, *e.g.,* Opinion 150, Opinions of Committee on Professional Ethics & Grievances, ABA (1957). Thus a prosecutor should of his own motion strike from the jury one whom he knew had expressed the opinion that the defendant should be convicted. Opinion 145, Opinions of Committee on Professional Ethics, N. Y. County Lawyers' Association (1918).

That most basic of all duties of a District Attorney—to see that justice is done—runs headlong into his prosecution of any matter in which he has a personal stake in the outcome. This conflict is recognized by L.S.A.—R. S. 15:310 which provides that:

> "Any district attorney shall be recused by the judge in criminal cases:
>
> * * *
>
> (3) If said district attorney shall have a personal interest adverse to that of the prosecution."

The leading Louisiana case is *State* v. *Tate,* 185 La. 1006, 171 So. 108 (1937). There the District Attorney, conducting the prosecution of the defendant accused of blowing up certain property by use of explosives, was associate counsel for the plaintiff in civil suits against the defendant arising from the same set of facts. The district attorney was characterized by the court as a quasi-judicial officer of the State, under a duty to see that no innocent man suffers, equal to his duty to see that no guilty man escapes. Hence a district attorney should not be involved or interested in extrinsic matters which might consciously or unconsciously impair his power to conduct the accused's prosecution impartially. In summary this Court held in *Tate* that the rule that "the prosecuting attorney must be fair and impartial, and see that defendant is not deprived of any constitutional or statutory right" requires "their recusation in those cases in which their interest, directly or indirectly, may be such as to cause them to sacrifice impartial justice to personal advantage."

It is worthy of note that the trial court in *Tate* had denied the motion to recuse because the District Attorney's personal interest would make him "all the more zealous in the prosecution of this cause", ergo his interest was not, in the precise statutory language, "adverse" to the prosecution. But this Court of course rejected such a myopic construction, and reversed, holding that, "in his efforts to prove conviction, a district attorney must be animated by his sense of public duty and not stimulated by his hope of private gain." 171 So. at 112.

District Attorney Pitcher's personal feelings in this case were naturally more intense than were the district attorney's in *Tate,* who stood to profit merely financially. Mr. Pitcher was not seeking money damages; he was battling for the vindication of his reputation and honor. We have here an extreme example of personal involvement, much more so than is found, for example in *State* v. *Mar-*

cotte, 229 La. 539, 86 So. 2d 186 (1956), where the allegations were held sufficient in the defendant's motion to recuse the district attorney. Recusation in *Marcotte* was urged on the ground that the district attorney had personal animosity to the defendant because of political differences, including the defendant's support of his opponent in an election.

In this case justice could not be done so long as District Attorney Pitcher stood to gain so much by conviction. That he recused himself in the prosecution for his own defamation is meaningless for his interest and Judge Blanche's were identical. This is demonstrated by his appearing as a witness for the State in this trial. The depth of his emotional involvement pervades his testimony. He said, *inter alia,* that defendant was a Negro agitator (Tr. 60-61) and then, though having been cautioned by the trial court, repeated the epithet by referring to defendant as an "outside agitator" (Tr. 62). The District Attorney also admitted he was an officer and founder of the Louisiana Citizens Council (Tr. 71).

The objectivity essential to the proper functioning of a District Attorney, including the performance of the daily tasks of his office which could so greatly affect the liberty of defendant, were divested of dispassion and insight. His investigation of the facts, his decision whether to prosecute or not, his preparation for trial, his decisions as to which facts to offer and which not to offer, his solicitation of witnesses and their preparation for trial, his recommendations as to the proper charge in the bill of information, and all the other manifold ways in which an objective and impartial district attorney safeguards the rights of the accused were, if not absent here, at least suspect.

Even if District Attorney Pitcher were the most principled and strongly self-disciplined of all men, his failure to recuse himself until the last minute would discredit the entire prosecution. "[T]he tribunals of the country shall not only be impartial in the controversies submitted to them but shall give assurance that they are impartial, free * * * from any 'bias or prejudice' that might disturb the normal course of impartial judgment." *Berger* v. *United States,* 225 U. S. 22, 35-36 (1921).

This necessity for the appearance of doing justice as well as for the doing of it has been an integral part of our judicial system:

> "It is not enough that the judge, despite his predetermination of essential facts, may put them aside and conduct a fair trial but that there also shall be such an atmosphere about the proceeding that the public will have the 'assurance' of fairness and impartiality." *Connelly* v. *United States District Court,* 191 F. 2d 692, 697 (9th Cir. 1951).

Or to put it another way, "the change of judge is conditioned, not upon the actual fact of his prejudice, but upon the imputation of it." *People ex rel. Burke* v. *District Court,* 152 Pac. 149, 152 (1915).

In fact and in fancy District Attorney Pitcher's failure to recuse himself and the trial court's failure to timely grant defendant's motion to recuse has so prejudiced the fair trial of defendant that his constitutional right to due process and to equal protection of the law under the Fourteenth Amendment has been violated.

Conclusions

1. The United States Supreme Court has provided the setting within which all courts must now evaluate defamation cases:

> "Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co.* v. *Sullivan,* 84 S. Ct. at 721.

Appellant respectfully submits that the Louisiana criminal defamation statutes cannot withstand the rigid First Amendment standards which were promulgated in the *New York Times* case. This Honorable Court, in recognition of this historic development in American constitutional jurisprudence, should declare the statutes unconstitutional on their face, and consequently the bills of information should be quashed, the convictions and sentences set aside, and the defendant discharged.

2. In any event, the information should be quashed, the convictions and sentences set aside, and the defendant discharged, because the trial and the convictions violated required constitutional standards of free speech enunciated by the Supreme Court. Even if the statute is not unconstitutional on its face, the First Amendment prohibits its application to a citizen who engage in criticism of a public official. This Court should affirm that there is no more vital area for guaranteeing the widest latitude of public debate than the many problems of race relations which are now confronting our country. Appellant respectfully prays that this Court should not permit any public official or group of public officials in this State to attempt to stifle debate and criticism concerning these problems via the invocation of criminal defamation statutes. Nor should this Court permit such statutes to be used as a tool for the persecution and repression of American citizens who are seeking to organize themselves to peacefully implement the elimination of racial segregation in accordance with the requirements of the United States Constitution and the commands of Court decisions.

3. Furthermore the trial and convictions of defendant in a systematically racially segregated courtroom and courthouse contaminated the entire prosecution, and requires that in any event the conviction and sentence be set aside, and a new trial ordered in an atmosphere completely free of any racial segregation.

4. The conviction and sentence must likewise be set aside because of the denial to appellant of a fair trial by reason of the failure of the Court to timely grant the motion to recuse the District Attorney who was plainly not a disinterested party.

Respectfully submitted,

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Certificate of Service

I, Robert F. Collins, member of the bar of the State of Louisiana, hereby certify that a copy of this original brief on behalf of appellant has been duly served on Sam J. D'Amico, Esq., Special Counsel for the State of Louisiana, care of the office of the District Attorney for the Parish of East Baton Rouge, State of Louisiana, Parish Courthouse, Parish of East Baton Rouge, Louisiana; and that a copy of the same was also duly served on Hon. Jack P. F. Gremillion, Attorney General of the State of Louisiana, office of the Attorney General, New Orleans, Louisiana.

Robert F. Collins.

JUL 1 2 1963

SUPREME COURT OF LOUISIANA

[illegible]

NO. 46,395

STATE OF LOUISIANA

VERSUS

B. ELTON COX

APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE
HONORABLE FRED A. BLANCHE, JR., JUDGE

NO. 46,396

STATE OF LOUISIANA

VERSUS

B. ELTON COX

IN RE: B. ELTON COX APPLYING FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION TO THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

SUMMERS, Justice.

In these consolidated cases[1] defendant, B. Elton Cox, was charged by the district attorney of East Baton Rouge Parish with obstructing public passages as defined and prohibited by R.S. 14:100.1. He was convicted, sentenced to

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[1] There were four bills of information filed against the accused that were consolidated for trial below. On one charge involving criminal conspiracy the accused was acquitted; another charge of obstructing justice is on appeal in this court and is separately docketed; the remaining two of the four charges are the subject of this opinion.

McCaleb, J. dissents with written reasons pay a fine of $500 and to be imprisoned in the parish jail for a period of five months, and, in default of the payment of the fine, to be imprisoned an additional five months. An appeal was taken in this case and is docketed in this court under Number 46,395.

By separate bill of information Cox was charged with disturbing the peace as defined and prohibited by R.S 14:103.1. He was convicted, sentenced to pay a fine of $2 and to imprisonment in the parish jail for a period of fou months, and, in default of the payment of the fine, to be confined in the parish jail for four months. The accused having no right of appeal in this latter case, made application to this court for writ of certiorari, mandamus and prohibition which we granted under our supervisory powers to review the correctness of certain actions below.[2]

The bill of information in No. 46,395 charges that defendant "did violate the provisions of R.S. 14:100.1 in that he did wilfully obstruct the free, convenient and normal use of a public sidewalk within the City of Baton Rouge, thereby impeding, hindering and restraining passage thereon."

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[2] In both of these cases the accused was incarcerated in the parish prison pursuant to the sentences which were decreed to run consecutively. But, originally, because of the trial court's failure to allow proper delay after verdict and before sentence as required by R.S. 15:521 we granted writs of habeas corpus in both of these cases. In our review of the trial court's action (See State v. Clemmons, 243 La. 264, 142 So. 2d 794 (1962)) the writs were made peremptory, the sentences were annulled and set aside and the accused was ordered released on bail until such time as legal sentences were imposed and the accused was afforded an opportunity to take the procedural steps necessary to bring the matter before this court either on appeal or by writ application.

When the cases were again resumed below, the accused filed certain motions, perfected bills of exceptions and, in due time, was again sentenced as outlined in the body of this opinion.

The pertinent parts of the statute relied upon by the State provide:

> "No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, water craft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.
>
> Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions. * * * " R.S. 14:100.1

The bill of information in No. 46,396 charges that defendant "violated R.S. 14:103.1, * * * in that he did under circumstances such that a breach of the peace could be occasioned congregate with others in and upon a public street and upon public sidewalks in front of the Courthouse in the Parish of East Baton Rouge, a public building, and in and around certain entrances of places of business and failed and refused to disperse and move on when ordered to do so by the Sheriff of East Baton Rouge, a person duly authorized to enforce the laws of this state."

The pertinent portion of the statute upon which this charge is based provides:

INTENT
OR
CIRCUMSTANCES

1.) crowds
or
congregates

2. fails to
disperse &
move on
when ordered
to do so

"A. Whoever with intent to provoke a breach of the peace or under circumstances such that a breach of the peace may be occasioned thereby:
(1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon a shore protection structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place or building, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when

> ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person * * * shall be guilty of disturbing the peace * * * ."

The defendant filed motions to quash and motions for bills of particulars to each of these bills of information prior to trial. These motions were overruled and the cases proceeded to trial, where these facts were established.

On the morning of December 15, 1961, the defendant, Cox, as the unquestioned leader, with a crowd of Negroes variously estimated at 1,500 to 3,800 (we think 2,000 persons is a fair conclusion to be derived from the evidence) assembled in the heart of Baton Rouge in the vicinity of the Old State Capitol Building, a short distance from the parish courthouse. Shortly before noon, Cox led these demonstrators in an orderly fashion to the vicinity of the parish courthouse, where the sheriff, chief of police and a substantial contingent of approximately eighty law enforcement officials had gathered in preparation for the march upon the courthouse. Twenty-three Negroes had been arrested the day before for demonstrations in Baton Rouge and they were at that time imprisoned in the parish jail located in the upper floor of the courthouse building.

Arriving near the courthouse in the vanguard of the marchers, Cox was confronted by the sheriff and chief of police and was asked what his intentions were. He announced to them that the marchers were demonstrating against segregation and their activities would be confined to a few songs, a speech, and peaceful demonstrations, the whole of which would consume only a few minutes. The sheriff then advised Cox to confine his demonstration to the time mentioned and no more.

The marchers then occupied the sidewalk across the street from the western entrance of the courthouse. The testimony and motion pictures in evidence unmistakably establish the fact that the marchers completely occupied the entire sidewalk for the greatest portion of a block across from the courthouse in such a manner that no passage was possible thereon. All of the entrances to many offices facing that sidewalk were blocked, their occupants being unable to enter or leave. In the words of one witness the demonstrators were "tightly packed" along most of the sidewalk. Unmistakably, too, these activities resulted in an obstruction of the street separating the sidewalk occupied by the marchers and the courthouse. Because of this, it was necessary to reroute traffic away from that street. Meanwhile, several hundred white persons had gathered in front of the courthouse across the street from the demonstrators.

There were silent prayers and a display of signs, which the demonstrators had kept hidden in their clothing. These signs being the identical ones used by the demonstrators who had been arrested the day before. All of these activities took place under Cox's command and according to instructions he issued during each phase of the demonstration.

Cox then made a speech which was in effect "a protest against the illegal arrest of some of their members." He admonished the multitude of demonstrators to remain peaceful.

and generally built them up emotionally for further sit-in demonstrations which he instructed them to conduct at lunch counters in the business district of the city upon leaving the scene.

The crowd then sang songs, answered by the prisoners in the jailhouse, and this in turn evoked loud and frenzied outbursts and "wild yells" from the demonstrators assembled on the sidewalks.

TESTIMONY OF STATES WITNESSES

Whereupon "grumbling" was heard among the white people, a feeling of "impending excitement" was apparent to all and a fear arose among those present that they were "about to have a riot." Several witnesses testified that in their lifetime no demonstration of this nature or scope had ever taken place in Baton Rouge. As one witness expressed it the crowd was "rumbling." In the large crowd the "tension was running high." Some of the witnesses felt the demonstrators were about to storm the courthouse to get the prisoners who had been arrested the day before.

At this time the prisoners in jail were "hollering", "screaming", "beating on bars", "beating on walls and so on" trying to attract the attention of the demonstrators across the street.

The sheriff, feeling that a riot was imminent, and fearing the crowd would get out of hand instructed Cox by means of a loudspeaker so that all present could hear to "move on" and "break it up", that he had had his time. Cox then instructed the demonstrators by saying "Don't move" and by his actions and demeanor defied the sheriff's orders. The demonstrators and Cox stood immobile. They refused to move on.

The police then dispersed the crowd with tear gas and Cox was arrested the next day.

Four causes are assigned by the accused for setting aside the conviction below.

First, it is asserted that the specific laws under which he was charged, tried and convicted (R.S. 14:100.1 and R.S. 14:103.1) are unconstitutional in their application, for the conviction thereunder infringes upon the defendant's right of free speech protected by the First Amendment of the United States Constitution which the States cannot deny its citizens because of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

Second, the claim is made that these laws and the bills of information are too vague and general and hence violate the due process and equal protection clauses of the Fourteenth Amendment.

Third, it is contended that Cox's trial and conviction were violative of the Fourteenth Amendment for there was no evidence tending to prove the crime charged.

Fourth, it is contended that the segregated conditions in the courtroom during the trial denied Cox a fair trial in violation of the Sixth and Fourteenth Amendments.

Defendant's first contention is based upon the proposition that the statutes (R.S. 14:100.1 and R.S. 14:103.1) prohibiting the obstructing of public passage and disturbing the peace, under which defendant was convicted, are unconstitutional in their application in this case. The defendant asserts that if those statutes are construed to convict defendant for his action in obstructing the sidewalks while demonstrating against segregation it deprives him of the freedom of assembly and freedom of speech and the right to peacefully picket guaranteed by the First Amendment to the Constitution of the United States. Under the due process and equal protection of the laws clause of the Fourteenth Amendment, it is contended, the State of Louisiana must afford the right of freedom of speech to this defendant. Defendant relies upon the case of Thornhill v. Alabama, 310 U.S. 88, 60 Sup. Ct. 736, 84 L. Ed. 1093 (1940),holding that peaceful picketing was within the liberties protected by the First and Fourteenth Amendments. The argument is advanced that such interest as the State of Louisiana has in protecting the public peace is not substantial enough to justify this prosecution which has the effect of denying to the accused the guarantees of freedom of speech and expression.

Thus we understand the contention to be that even though the statute might be constitutionally enforced under other circumstances, it cannot be invoked to punish this demonstration which the defendant asserts is no less an expression than is speech against segregation; and this freedom of expression, like freedom of speech, is protected by the First Amendment. Citing concurring opinion of Mr. Justice Harlan in Garner v. Louisiana, 368 U.S. 157, 82 Sup. Ct. 248, 7 L. Ed. 2d 207 (1961).

The United States Supreme Court has long ago announced that these First Amendment freedoms are protected by the Fourteenth Amendment from invasion by the States. Edwards v. South Carolina, 372 U. S. 229, 83 Sup. Ct.____,

9 L. Ed. 2d 697 (1963); Thornhill v. Alabama, supra; Cantwell v. Connecticut, 310 U.S. 296, 60 Sup. Ct. 900, 84 L. Ed. 1213 (1940); DeJonge v. Oregon, 299 U. S. 353, 57 Sup. Ct. 277, 81 L. Ed. 270 (1937); Stromberg v. California, 283 U.S. 359, 51 Sup. Ct. 532, 75 L. Ed. 1117 (1931); Whitney v. California, 274 U.S. 357, 47 Sup. Ct. 641, 71 L. Ed. 1095 (1927); Gitlow v. New York 268 U.S. 652, 45 Sup. Ct. 625, 69 L. Ed. 1138 (1925).

But the right of freedom of speech is not absolute and a State may by general and non-discriminatory legislation, under its police power, regulate the exercise of that freedom. Cantwell v. Connecticut, supra.

Our inquiry, then, must be directed to the regulation of the constitutional guarantee and a careful consideration of whether that regulation is within the allowable area of state control. And so in this inquiry we must look to the conduct to be limited or proscribed.

The statutes in question do not come within the objection that they punish conduct which is so generalized as to be "not susceptible of exact definition" as was the case in Edwards v. South Carolina, supra. To the contrary, in each instance the proscribed conduct is precisely and narrowly defined for it is to "obstruct * * * any public sidewalk * * * by impeding, hindering, stifling, retarding or restraining traffic or passage thereon" in one instance which is proscribed and it is those who "under circumstances such that a breach of the peace may be occasioned thereby: (1) crowds or congregates with others * * * in or upon * * * a public sidewalk" who are guilty of disturbing the peace

This in part relates to obstructn sidewalk

dist. Peace who authorized D. to select circumstances [illegible] [illegible] [illegible] o.k.

in the other instance. See also Garner v. Louisiana, 368 U.S. 147, 82 Sup. Ct. 248, 7 L. Ed. 2d 207 (1961), Town of Ponchatoula v. Bates, 173 La. 824, 138 So. 851 (1932).

Laws having the character of those under attack have been before the courts of last resort in other states, and have been upheld as reasonable regulations in the exercise of police power. City of Tacoma v. Roe, 190 Wash. 444, 68 P. 2d 1028 (1937); State v. Sugarman, 126 Minn. 477, 148 N. W. 466, 52 L.R.A. (N.S.) 999 (1914); Benson v. City of Norfolk, 163 Va. 1037, 177 S.E. 222 (1934).

In the statutes under consideration there is no discrimination, but where labor picketing is concerned a clearly defined exclusion recognized in Thornhill v. Alabama, supra, is set forth.

In Edwards v. South Carolina, supra, the court announced that no infringement upon constitutional guarantees would be involved "If, for example, petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public * * * * " And this is the precise nature of the regulation which these contested statutes invoke. The reasons which support such enactments are obvious and have been approved on many occasions. They are that:

> "Municipal authorities, as trustees of the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which streets are dedicated. So long as legislation to this

> and does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion." Schneider v. State, 308 U.S. 147, 160, 60 Sup. Ct. 146, 84 L. Ed. 155 (1939).

And on this authority, and others, it is manifest that the right to freely speak against segregation, if that was the true motive of the demonstrators in the case at bar, bears no relation to facts involving two thousand persons marching against the halls of justice and obstructing the public sidewalks there in such a manner that a violation of the statute proscribing that conduct is manifest. These demonstrators, like other citizens, must confine their exercise of constitutional freedoms within lawfully regulated limits of those freedoms.

In support of the second grounds for setting aside this conviction, it is asserted that these laws and the bills of information are too vague and general and hence violate the due process and equal protection clauses of the Fourteenth Amendment.

R.S. 14:103.1 is said to be ambiguous for it is not clear whether the prosecution must show an actual disturbance or only circumstances such that a disturbance may be occasioned. In either event, however, we think there is no ambiguity in that language of the statute for to "disturb the peace" in Louisiana means " * * * to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." Town of Ponchatoula v. Bates, 173 La. 824, 138 So. 851 (1932). To "breach the peace" has the identical meaning in our view and the statute so declares, for it provides that "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby" commits certain acts "shall be guilty of disturbing the peace." Because the words of the statute have a fixed, definite and commonly understood meaning and a meaning ascribed to them by this court, they are not ambiguous nor is it objectionable that the statute seeks to proscribe conduct which will result in a disturbance of the peace. The statute may lawfully have the prevention of a disturbance as its object as

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U.S. v Dennis

well as punishing an actual disturbance. Therefore the accused had adequate notice of the proscribed conduct. Garner v. State of Louisiana, 368 U.S. 157, 82 Sup. Ct. 248, 7 L. Ed. 2d 207 (1961).

With respect to R.S. 14:100.1 the contention is made that the bill of information charging a violation of that statute is fatally defective because it fails to inform defendant of the nature and the cause of the accusation against him, though it is conceded that the statute may be sufficient to describe or legally characterize the offense. U.S. Const. amend. VI; La. Const. of 1921 art. I, § 10; R.S. 15:2, R.S. 15:5 and R.S. 15:227.

The Louisiana Constitution, like the United States Constitution, provides that in all criminal prosecutions the accused has a right to be informed of the nature and cause of the accusation.

The argument is advanced here that one cannot be charged with obstruction "of a public sidewalk within the City of Baton Rouge . . . ." One must be charged with obstruction of a particular sidewalk, i.e., ". . . that sidewalk on the West side of St. Louis Street, in the City of Baton Rouge, Louisiana, identified by municipal number 200, bounded on the North by . . . and bounded on the south by . . . ." But we cannot agree with the contention; the quoted language of the bill of information in the beginning of this opinion refers to the sidewalk in "front of the Courthouse", which, together with the date of the occurrence, is definite and clear and furnishes the requisite information to satisfy the constitutional test, which is threefold:

First, the statement of the accusation should inform the accused of the charges that will be brought against him at the trial in order that he may properly defend himself. Second, the trial judge should be informed by the indictment of what the case involves, so that, as he presides and is called upon to make rulings, he may do so intelligently. Third, the indictment should form a record from which it can be clearly determined whether or not a subsequent proceeding is barred by the ~~forum~~ former adjudication.

When the accusation fulfills these purposes, it satisfies the constitutional mandate that the accused must be informed of the nature and cause of the accusation. State v. Scheler, 243 La. 443, 144 So. 2d 389 (1962).

The third contention that there was no evidence tending to prove the crime charged is without merit.

This court is limited in the scope of its review in criminal matters by Article VII, Section 10 of the Constitution of this State "to questions of law only." Although it is recognized in our jurisprudence that a proper interpretation of the foregoing constitutional provision permits a complaint that a conviction based upon "no evidence at all" presents the question of law whether it be lawful to convict an accused without any proof whatsoever as to his guilt, it is firmly established that it is only when there is no evidence at all upon some essential element of the crime charged that the court may set aside a verdict. But, where there is some evidence to sustain the conviction, no matter how little, this court cannot pass upon the sufficiency thereof. That comes within the exclusive province of the trial judge or jury. State v. Copling, 242 La. 199, 135 So. 2d 271 (1961).

Undoubtedly, from the facts recited, there is some evidence. In our view there is ample evidence to sustain this conviction.

The final grounds relied upon to reverse this conviction is that racial segregation existed in the court where defendant was tried and convicted and this segregation denied him a fair trial in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

The record undoubtedly establishes that racial segregation existed in the courtroom as it had for many years.

On April 29, 1963, the United States Supreme Court held that "State-compelled segregation in a court of justice is a manifest violation of the State's duty to deny no one the equal protection of its law." Johnson v. Virginia 31 U.S.L. Week 3353 (U.S. April 29, 1963). But in the Johnson case the objection to segregation was made by a Negro who had been arrested for contempt of court for sitting in seats assigned for white citizens, and the arrest and conviction was for that conduct. In the case before us, there is no charge against the defendant for having violated the court-imposed seating arrangement and none of the parties upon whom the segregation was imposed are before this court in this case. Hence the Johnson case is not authority for reversing this conviction. It has not been made to appear that the segregation resulted in a miscarriage of justice to this defendant. R.S. 15:557. If it were otherwise, it would result that every Negro convicted in that court in the past would be entitled to have his conviction set aside.

For the reasons assigned the conviction and sentence are affirmed.

STATE OF LOUISIANA VS. B. ELTON COX - NO. 46,395.

McCALEB, J., Dissenting.

The ruling herein that the bill of information is sufficient to apprise the accused of the nature and cause of the accusation against him is in conflict with our recent decision in State vs. Smith, 243 La. 656, 146 So. (2d) 152, handed down on November 5, 1962.

In the Smith case the defendants were charged in a bill of information containing two counts with violating (1) R.S. 14:100.1 (obstructing public passages) and (2) R.S. 14:103.1 (disturbing the peace) under allegations similar to those made in the separate bills of information which have been upheld in the instant matter. The Court, after setting forth the settled jurisprudence of this State to the effect that it is not a sufficient compliance with the constitutional mandate of Section 10 of Article 1 of the State Constitution (that the accused shall be informed of the nature and cause of the accusation against him) for the bill of information to be couched in the language of the statute when the statutory words do not, themselves, set forth the elements necessary to constitute the offense intended to be punished (see, among other cases, State vs. Verdin, 192 La. 275, 187 So. 666; State vs. Varnado, 208 La. 319, 23 So. (2d) 106 and State vs. Blanchard, 226 La. 1082, 78 So. (2d) 181), quashed the bill of information, holding that the provisions of R.S. 14:100.1 and 14:103.1 were not specific enough to support a charge drawn in their language and that allegations of the particular facts were required in order to comply with the Constitution.

The motion to quash should be sustained.

SUPREME COURT OF LOUISIANA

Nos. 47018 and 47019

STATE OF LOUISIANA,
Appellee,
versus
B. ELTON COX,
Appellant.

Appeal from the Criminal Section of the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana, Honorable Fred S. LeBlanc, Judge, Presiding.
Nos. 44,287 and 44,288

DEFENDANT'S BRIEF IN RESPONSE TO STATE'S APPLICATION FOR REHEARING

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Nos. 44,287 and 44,288

DEFENDANT'S BRIEF IN RESPONSE TO STATE'S APPLICATION FOR REHEARING

Introductory Statement and Summary of Argument

The State has moved for a rehearing of the decision of this Court, which reversed the defendant's conviction, and remanded for a new trial. The grounds for the reversal and the remand, as stated by this Court, were that District Attorney Pitcher's failure to timely recuse himself "* * * and the Judge's failure to * * * [recuse him] was a substantial violation of the constitutional and statutory rights of the accused to the fair and impartial trial guaranteed by the Constitutions of this State and of the United States." Defendant is, of course, pleased that this Court acknowledged the merit in his argument on the original appeal: that the failure to recuse was a serious constitutional error requiring reversal. However, it is defendant's contention that the constitutional errors committed below are such that no fair trial will be possible on remand. Consequently, defendant contends that the conviction should be reversed and that he should be discharged without the necessity of a new trial, for reasons that will be discussed below. Defendant's counsel therefore welcome the opportunity for rehearing and reargument of this case, and join with the State in this application, although on different grounds. Indeed, as will be shown, the State's attack on this Court's decision is meritless, and the grounds set forth by the State for rehearing are insufficient and erroneous.

Finally, if this Court is disposed to grant reargument, defendant urges that reargument should be heard on the entire case, including specifically, certain of defendant's contentions on the original appeal which were denied by the Court in its decision.

I. Failure of the District Attorney to Recuse Himself Creates Incurable Error not Remediable by Retrial.

District Attorney Pitcher did not recuse himself (and was not ordered to do so by the trial court) until two days before trial. By then failure of recusation had so tainted this case that no trial could be fair. Thus the District Attorney's nonparticipation in the conduct of the trial itself was meaningless, and for the same reason this court's remanding of the case for new trial cannot cure the violation of due process which has been wrought.

Even the State senses something of the inadequacies of remand for a new trial, as p. 1 of its application for reargument indicates. However, the State attributes this to the purported fact that defendant has already received a fair trial whereas the reverse is actually true.

The trial occurred only two days after the District Attorney recused himself. Obviously, anyone familiar with the trial of a criminal case knows that by then the preparation for trial is all but complete. In this case, by the time of trial date minus two, the damage to defendant's constitutional right to the fair administration of justice, caused by the District Attorney's personal interest in his conviction, had already been done. Once the preparation for trial of this case had been completed, no new trial could erase the contamination to the judicial process caused by the District Attorney's personal interest.

For example, two of the most important features of preparation of any case for trial are investigation of the facts and preparation of witnesses to testify. Investigation of the facts assumes even more significance than usual when conducted by a public prosecutor in connection with a crime, for that public officer's duty is "to see that justice is done" [Canon 5, Canons of Professional Ethics] and thus to see that no innocent man suffers as well as that no guilty man escapes [*State* v. *Tate,* 185 La. 1006, 171 So. 108 (1939)]. In his conduct of the investigation and his determination whether or not defendant Cox should be prosecuted and tried, did District Attorney Pitcher exercise the scrupulous objectivity needed? Whether he did or not, a conviction in this case would always be suspect. One would wonder whether there are facts, which only the vast resources of the State could bring to light, that might establish defendant's innocence but which, under the control of a prosecutor who puts self-interest in obtaining a conviction above the public interest in doing justice, may never see the light of day in a courtroom.

Objective and impartial pre-trial investigation of the facts was particularly important here because of the nature of the case. Truth is a well-established defense to a claim of defamation. But the only persons who conclusively know whether or not defendant's accusation of bribe-taking was true are Judge Blanche and District Attorney Pitcher. Yet the District Attorney assumed and refused to relinquish the responsibility for establishing what the truth was.

This same doubt must surround the testimony of the State's witnesses at the trial. Any lawyer worth his salt will vigorously cross-examine his own witnesses before trial to make sure that they know the facts, that they will not become confused, that they will testify only as to their own knowledge. He is under a special obligation to verify that his witnesses will testify truthfully. Yet here again the necessary objectivity required for the District Attorney to make that judgment was obviously obstructed in this case by his own desire to believe what his witnesses were saying.

A fair trial of Cox can never be had. The constitutional errors welded into the structure of this case in the course of the preparation for the last trial can never be eliminated. Will this Court assign a referee to assure that Special Prosecutor D'Amico begins an investigation from scratch? Will the four members of the press and radio, who with Messrs. Blanche and Pitcher comprised the entire case against defendant, be barred from testifying at the new trial? Can the multitude of decisions and judgments of District Attorney Pitcher, tangible and intangible, which must have shaped the course and conduct of this prosecution by the State be completely wiped out?

It is an impossible task. Justice can only be served by reversal of the conviction and discharge of the defendant.

It is submitted that this case is one of those which occasionally occurs, in the course of a trial resulting in a criminal conviction, where there is such a profound constitutional defect as cannot be cured by ordering a new trial. Assume, for example, that defendant's right to counsel was violated by wire tapping of all presumably private conversations with his lawyer for a substantial period of time after his arrest. See *Coplon* v. *United States,* 191 F. 2d 749 (D. C. Cir. 1951), cert. den., 342 U. S. 926.

It is evident that in such a case the constitutional infirmity would be of such a grave nature that a new trial would cure nothing and only a reversal of the conviction and a direction to set the defendant at liberty would satisfy the demand of the Constitution. As the U. S. Supreme Court held in *Glasser* v. *United States,* 315 U. S. 60, 76 (1942), the necessity for assurance of vital constitutional rights is "too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial."

Appellate courts have a constitutional obligation not only to insist that trial courts do justice, but that they give the appearance of doing justice, *i.e.,* that they do not violate any of the acceptable norms of constitutional due process. See *Cassell* v. *Texas,* 333 U. S. 202 (1950). One of the costs which Americans have assumed as a free people under law is that, where necessary, the social cost will be borne of allowing a guilty person to go free rather than tainting the administration of justice by his permitting conviction by unfair methods. Here, in contrast, the defendant, rather than being a guilty person, was the victim of serious constitutional violations concerning the sufficiency of the evidence in the course of his trial, as demonstrated in our brief on appeal. These violations were among those which the Court found unnecessary to discuss in its decision.

Finally, if as a practical matter, in the interests of the smooth administration of criminal justice, there may be some ambiguous situations where an early error can be cured by a later remedy, this kind of patch-up theory is impermissible where there was no ambiguity, and where the error was committed and protested from the beginning.

II. Reargument Should Be Heard on the Unconstitutionality of L. S. A.—R. S. 14.47.

Defendant had argued in his appeal that, *inter alia*, (1) Louisiana's criminal defamation statute is unconstitutional on its face and (2) the statute is unconstitutional as applied to criticism of a public official. This Court rejected both those contentions but should now hear their reargument, for the following reasons:

1. *The Statute Is Unconstitutional on Its Face*—In summarily dismissing this point, the Court cited *State* v. *Webster,* 245 La. 523, 159 So. 2d 140 (1963); *State* v. *Moity,* 245 La. 546, 159 So. 2d 149 (1963); and *State* v. *Garrison,* 244 La. 787, 154 So. 2d 400, *prob. juris. noted*, 375 U. S. 900 (1963).

Webster and *Moity* were both decided before *New York Times Co.* v. *Sullivan,* 84 Sup. Ct. 710 (1964), discussed at length in defendant-appellant's original brief on appeal. The *New York Times* case relied in part on *Wood* v. *Georgia,* 370 U. S. 375 (1962), which was rejected as authority by this Court in *Webster.* Both *Webster* and *Moity* involved convictions for criminal defamation of persons who had criticized district attorneys in connection with the conduct of their official duties. These cases together with *Garrison* and the case at bar, strongly suggest a pattern or attitude of antagonistic behavior on the part of certain State officials in Louisiana against public criticism which demonstrates that need to "assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people" which the United States Supreme Court found so imperative in the *New York Times* case.

Defendant urges that this Court, with the benefit of retrospective evaluation, should hold that the freedoms of the First Amendment will not tolerate the invocation of R. S. 14:47 in order to protect those charged with responsibility for law enforcement from criticism that they are themselves breaking the law.

At the very least the Court should reverse decision because the United States Supreme Court, obviously concerned with the possible unconstitutionality of this statute, has ordered reargument next term of *Garrison,* 32 U. S. L. Week 3444 (June 23, 1964).

Courts throughout the country are continuing their re-evaluation and revision of defamation standards in the light of the *New York Times* case. The United States Court of Appeals for the Second Circuit, in a decision announced July 7, 1964, has stated that in the light of the *New York Times* case "* * * a newspaper cannot constitutionally be held for defamation when it states without malice, but cannot prove that an incumbent seeking re-election has accepted a bribe * * *." *Linus Pauling* v. *News Syndicate Company, Inc.,* Docket No. 28436, ——F. 2d —— (decision not yet reported). The United States Supreme Court is perhaps considering whether the defendant in *Garrison* can be constitutionally held for defamation because of his statement that certain judges were under racketeering influence. Defendant respectfully suggests that he can no longer be constitutionally held for defamation when he stated "without malice but cannot prove" that he had been told by others that certain public officials had "accepted a bribe."

2. *The Statute Is Unconstitutional as Applied to Criticism of a Public Official*—The discussion in Point II, Section 1, immediately above is equally applicable here.

In addition, this Court, despite a lengthy and rather involved analysis of the requisite of truth in the *New York Times* case and in the Louisiana statute, cannot escape the irrefutable fact that in *New York Times* the Supreme Court held that:

> "The constitutional guarantees require * * * a federal rule that prohibits a public official from recover-

> ing damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

Assuming defendant's statement about the District Attorney to be false, there is a broad gap between the "reasonable belief" in the truth of a statement required of defendant by R. S. 14:49, before actual malice need be proven, and the knowledge of falsity or reckless disregard thereof which is the only condition placed upon existence of the qualified privilege in *New York Times.* The former makes further demands upon defendant than the latter and is therefore unconstitutional.

For example, suppose defendant Cox held a belief in the truth of his statement, but this belief was held to be "unreasonable" rather than "reasonable," as was in fact intimated by the trial judge who scoffed at Cox's reliance on convicts for the source of his information. He could not then take refuge in the qualified privilege established by 14:49 even though he would fall considerably short of having the actual malice required by *New York Times* as the basis for loss of his otherwise constitutionally guaranteed privilege.

For Cox to have believed in the truth of what he was told by a fellow Negro prisoner may not have been "reasonable" under the standards of the Louisiana statute; but this is considerably less than knowing that what he has been told was false, or having a "reckless disregard" of whether it was truth or falsehood. A person may be unreasonable but still not reckless. Indeed, the law of negligence throughout its history has recognized a significant distinction between conduct which does not meet a reasonable prudent standard on the one hand, and conduct which is reckless or wanton on the other. The United States Supreme Court has articulated the reckless standard as the dividing line. Defendant respectfully contends that this Court was in error by stating that this standard was no different than the Louisiana statutory standard of "reasonable."

III. Reargument Should Not Be Granted on the Basis Advocated in the State's Application.

In its application for reargument the State advances the following reasons: (1) Defendant had a fair trial because District Attorney Pitcher did not participate in the trial; (2) District Attorney Pitcher's personal interest was not adverse to the prosecution's under R. S. 15:310(3); (3) this Court's decision to reverse and remand forecloses participation of any district attorney in criminal proceedings other than the "actual prosecution;" (4) authority of *State* v. *Melerine;* and (5) this Court's decision prevents institution of prosecution of defendant.

None of the reasons is valid. The first one, that of fair trial, has already been discussed. The others will now be discussed in turn.

1. *District Attorney Pitcher's Personal Interest is Clearly Adverse to the Prosecution's*—The State claims in its application, without attempting to explain its logic, that the interest of District Attorney Pitcher in seeking defendant's conviction is not the kind of personal interest contemplated by L. S. A.—R. S. 15:310(3). Obviously the State has not harkened to the Court's opinion wherein it found, on the basis of well-established precedent, that 310(3) is "applicable to cases where the district attorney had a personal interest in convicting the accused."

We need hardly belabor this point. Nothing could provide the District Attorney with a more personal interest in obtaining defendant's conviction than the prosecution of a defendant who is charged with having damaged the District Attorney's reputation by contending that the District Attorney is, in effect, dishonest in the performance of his public office.

As a practical matter, the personal interest of District Attorney Pitcher in achieving defendant's conviction goes far deeper than was discussed either in the Court's decision or above. As brought out at the trial, the District Attorney was an officer and founder of the Louisiana Citizens Council. This Court can certainly take judicial notice of its segregationist beliefs. Defendant is a Field Secretary for the Congress of Racial Equality. He was addressing a meeting of the N.A.A.C.P. on a civil rights matter. He accused District Attorney Pitcher of an act which was not only a violation of professional ethics but an act manifestly discriminatory against Negroes.

Emotionally, to a man of the background of District Attorney Pitcher, this must have been a particularly galling accusation by a man representative of the very social movement which the District Attorney, as a private citizen, has dedicated himself to fighting. It would take a character of almost inhuman infallability to rise above these demands upon his official conscience. This case cried out for recusation from the very beginning.

2. *The Court's Decision Does Not Foreclose Participation of District Attorneys in Investigation and Other Aspects of Criminal Law Enforcement.*

We agree with the State's contention on p. 2 of its application that a District Attorney's role should not be limited to prosecution per se but must include investigation of the case and other responsibilities. However, whether or not participation of a district attorney in law enforcement generally is a sound doctrine is not relevant here.

In deciding the issue of recusation, this Court simply resolved the question of whether a district attorney should be both avenger and prosecutor, *i. e.,* whether his personal interest in obtaining a conviction is compatible with the interest of the State (and of the office which he holds) in doing justice to all. The cases cited by this Court in footnote 6 of its decision simply illustrate that some courts (*e. g., Nicholson*) have gone much further than is necessary here in order to accommodate the sound principle that a District Attorney must do justice not only in substance but in form as well.

It is far-fetched for the State to claim that the Court's reversal and remand affects law enforcement throughout the state. The decision has no applicability where there is no "personal interest" contemplated by Article 310(3).

3. *State* v. *Melerine Is Not Good Authority*—The State on p. 5 of its application relies on *State* v. *Melerine,* 236 La. 881, 109 So. 2d 454 (1959), as authority for the proposition that District Attorney Pitcher lacked the personal interest necessary to compel recusation. That case is obviously distinguishable. In both actions—the criminal prosecution and the removal from office—at issue there, as discussed in the State's application herein, the District Attorney was only acting because of his capacity as District Attorney. His interest was only professional, never personal.

4. *Proper Prosecution of Defendant Cox Was Not Prohibited*—The State on p. 4 of its application, relying on L. S. A.—R. S. 16:1 and 15:17, states that "The only party who can institute a prosecution and terminate it is the District Attorney" and suggests that the Court has forgotten this fact. What is obviously meant by the statutes is that it is the office of district attorney which is responsible for instituting prosecutions. It does not mean that District Attorney Pitcher himself, even though an adversely interested official under 15:310(3), must nevertheless undertake prosecution of defendant Cox or else have the man go

unprosecuted altogether. If that were so then the restrictions in 15:310(3) would become meaningless.

When it first became known that District Attorney Pitcher, or any other official prosecutor for that matter, had an adverse personal interest so as to require his recusation from this or any other prospective case, a special prosecutor could have been as easily appointed at that time as two days before trial.

Surely none of the straws which the State clutches at can justify a retreat by this Court from its present position that:

> "Because of the essential identity of the two cases, it was the mandatory duty of the judge in the instant case to order the recusation of the district attorney when it was disclosed to him that the district attorney was, in effect, an injured party in both cases and had a personal interest in securing the conviction; and the judge's failure to do so was a substantial violation of the constitutional and statutory rights of the accused to the fair and impartial trial guaranteed by the Constitutions of this state and the United States."

Conclusion

Defendant realizes that, under Rule XI(4) of this Court, this may technically not be a proper case for granting of reargument since the decision upon which reargument is sought did not finally dispose of the case. Nevertheless, it is the Court's very omission to finally dispose of the case by outright reversal and discharge of defendant which leads us to seek reargument. Therefore, we respectfully request the opportunity for reargument. Barring granting of reargument on the grounds set forth herein by defendant, we urge that the Court deny the State's application and adhere to its original decision.

Respectfully submitted,

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Certificate of Service

I, Robert F. Collins, member of the Bar of the State of Louisiana, hereby certify that a copy of this original brief on behalf of defendant has been duly served on Sam J. D'Amico, Special Prosecutor for the State of Louisiana, 610 Raymond Building, Baton Rouge, Louisiana, and that a copy of the same was also duly served on Hon. Jack P. F. Gremillion, Attorney General.

Robert F. Collins.

Times-Picayune
NEW ORLEANS, LA.
D. 197,448 SUN. 305,323

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OCT 20 1964

JUSTICES STUDY GARRISON PLEA

High Court Again Airs Libel Conviction

By EDGAR POE
(Times-Picayune Staff Correspondent)

WASHINGTON — An appeal by Dist. Atty. Jim Garrison, under conviction of libeling criminal district court judges of New Orleans, was argued again before the Supreme Court Monday.

Garrison's appeal was taken under advisement. Ordinarily a decision can be expected within 30 to 60 days in these circumstances.

The new arguments Monday took on some new judicial ramifications. The appeal of the district attorney was first argued before the Supreme Court last April.

The libel conviction of Garrison grew out of a charge that the criminal judges were endeavoring to block his investigation of commercialized vice conditions. Garrison charged that the issue "raises interesting questions about the racketeer influences on our eight vacation-minded judges."

Louisiana Atty. Gen. Jack P. F. Gremillion represented the state before the high court. Col. Eberhard P. Deutsch of New Orleans represented Garrison.

Other Louisiana cases are awaiting Supreme Court action—appeals by B. Elton Cox of Baton Rouge. These involve action by Baton Rouge authorities in breaking up a demonstration against the arrest of 23 Negroes after permission to hold a short protest meeting had been granted. This occurred in 1961.

PARADE CHARGE

Cox described himself in his brief as "Rev. B. Elton Cox, a Negro field secretary for the Congress of Racial Equality." He was charged with holding a parade without a permit, and was later found guilty of defaming Judge Fred Blanche of Baton Rouge and Sargent Pitcher, East Baton Rouge Parish district attorney.

On the defamation charge, Cox was sentenced to pay a $3,000 fine, the maximum under law, and to serve a year in the parish prison, plus an additional year if the fines were not paid.

The decision of the Supreme Court in the Alabama case, involving the New York Times was cited in the arguments Monday. In that case the Supreme Court held that statements critical of a public official for his official acts did not constitute libel of the element of deliberate malice was lacking.

Atty. Gen. Gremillion insisted that Garrison had been motivated by malice, citing in support of this contention that Garrison's statements had been "proved untrue."

Justice Byron White peppered Gremillion with a series of questions involving this area. Chief Justice Earl Warren also directed to the Louisiana attorney general a hypothetical case in the following terms, after malice was defined as "ill will."

"Suppose a judge came to a litigant and offered to decide the case in his favor, if he were paid a sum of money in consideration of such a decision; and suppose this so outraged the litigant that by way of expressing his ill will he made public the charge that the judge in question had solicited a bribe, would this in your opinion constitute a violation of the Louisiana statute?"

'NOT PARALLEL'

Gremillion replied the two cases were not parallel. Subsequently, Gremillion said that under strict interpretation of the Louisiana law, such a case would violate the Louisiana statute.

Col. Deutsch reiterated the arguments he had made at the original hearing in April.

One was to the effect that the first and fourteenth amendments to the constitution render invalid any law which would authorize prosecutions on charges of "seditious libel"—defamation of a public official. The other was that in so far as any prosecution is valid, he said, the same amendments require that the case be tried before a jury.

At one point, Justice Tom Clark asked attorney Deutsch, if the district attorney had been reelected since the libel case originated. He replied that his client's term of office has not expired.

Court

THE NEW YORK TIMES, TUESDAY, NOVEMBER 24, 1964.

COURT BROADENS ITS RULE ON LIBEL

Defines Limits to Power of States in Criminal Cases

By JOHN D. POMFRET

Special to The New York Times

WASHINGTON, Nov. 23 — The Supreme Court decided today that the Constitution limits state power to impose criminal sanctions for criticism of the official conduct of public officials.

In so doing, the Court extended to criminal libel cases the rule it laid down for civil libel in a decision last March 9. In that case, it dismissed a $500,000 Alabama libel judgment against The New York Times and four Negro ministers.

Today's decision was unanimous, as was that in the Times case. It reversed the conviction of Jim Garrison, the district attorney of Orleans Parish, La., on a state charge of criminal defamation arising from his criticism of eight judges of the Criminal District Court of the parish.

The so-called "New York Times rule," extended today to include criminal libel cases, is that the Constitution limits state power to impose sanctions for criticism of the official conduct of public officials to situations where a statement is "made with actual malice—that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

"Where criticism of public officials is concerned, we see no merit in the argument that criminal libel statutes serve interests distinct from those secured by civil libel laws, and therefore should not be subject to the same limitations," the Court said today.

Associated Press

WINS IN HIGH COURT: Jim Garrison, a Louisiana district attorney, won reversal of libel conviction.

Criminal libel statutes, the Court pointed out, were originally intended to prevent utterances, true or not, that would provoke an enraged victim to a breach of peace. The Louisiana statute at issue was enacted at a time when duels were still fought.

"Changing mores and virtual disappearance of criminal libel prosecutions lend support to the observation [in a Yale Law Journal article last year] that ". . . under modern conditions, when the rule of law is generally accepted as substitute for private physical measures, it can hardly be urged that the maintenance of peace requires a criminal prosecution for private defamation,'" the Court said.

Mr. Garrison got into a squabble with the Orleans Parish judges in the fall of 1962. They had refused to approve funds to pay undercover agents investigating vice in the French Quarter of New Orleans.

Mr. Garrison called a news conference and criticized the local judges for allegedly taking too much time off, adding that their refusal to grant the disbursements "raises interesting questions about the racketeer influences on our eight vacation-minded judges."

The district attorney was tried without a jury before the judge of another parish, convicted of criminal defamation under Louisiana law, and fined $1,000 and sentenced to four months in jail. The conviction was upheld by the State Supreme Court.

Today's opinion reversing that conviction was written by Justice William J. Brennan Jr., author of the opinion in The New York Times case.

Justices Hugo L. Black, William O. Douglas and Arthur J. Goldberg concurred in two separate opinions.

They said, as they had in the Times case, that they thought the Court should have gone further.

Justice Black, in an opinion in which Justice Douglas joined, said that the First Amendment's guarantee of freedom of speech protected every person from having a state or the Federal Government fine, imprison or assess damages against him when he has been guilty of no conduct other than expressing an opinion.

Justice Black's opinion added: "I believe that the Court is mistaken if it thinks that requiring proof that statements were 'malicious' or 'defamatory' will really create any substantial hurdle to block public officials from punishing those who criticize the way they conduct their office."

He said he would hold that "there is absolutely no place in this country for the old, discredited English star chamber law of seditious criminal libel."

Justice Goldberg said that citizens and the press should have unconditional freedom in criticizing official conduct.

The Court declared that when criticism is directed at public officials and their conduct of public business, the interest in private reputation must be subordinated by the larger public interest, secured by the Constitution, in the dissemination of truth.

"Moreover," the Court continued, "even where the utterance is false, the great principles of the Constitution which secure freedom of expression in this area preclude attaching adverse consequences to any except the knowing or reckless falsehood."

Only when statements are made with the high degree of awareness of their probable falsity demanded by its New York Times rule may they be the subject of either criminal or civil sanctions, the Court said, adding:

"For speech concerning public affairs is more than self-expression; it is the essence of self-government."

6-2-62

To: CR

MR Chevigny says he will get out the Designations.

Sorry he didn't get it out before, but, unfortunately, he's been so busy, it was overlooked.

Please Call him Today or Tomorrow. Wants to know when Brief is due, etc.

WH 3-6500 Harriet

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION
TELEGRAM

W. P. MARSHALL, PRESIDENT

JUN 2 AM 11

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME

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= WE136 WW NFA023 COLLECT NF WASHINGTON DC 2 1055A EDT =

CARL RACHLIN = 1.43

165 WEST 46 ST NYK

=HAVE NOT RECEIVED DESIGNATIONS OF RECORD COX CASES. WIRE ADVICE = JOHN F DAVIS CLERK

JUN 2 Rec'd

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

MAR 20 1964

March 17, 1964

Carl Rachlin, Esq.
38 Park Row
New York 38, New York

Dear Carl:

We received notice that the defamation cases of Cox are set for argument on May 8, 1964. Please let me know what is the status of the brief.

Respectfully,

COLLINS, DOUGLAS & ELIE

BY: Nils R Douglas

NRD/vmg

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
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NEW ORLEANS, LOUISIANA 70113

Cox

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

March 25, 1964

MAR 26 1964

Carl Rachlin, Esq.
38 Park Row
New York 38, New York

Dear Carl:

I was sorry I did not see you when you came down to Mississippi. I don't recall whether I mentioned this to you before but the Cox Defamation Cases are set to be argued in the State Supreme Court on May 8, 1964. This means the brief must be filed in the State Supreme Court by April 24th.

Respectfully,

COLLINS, DOUGLAS & ELIE

BY: Nils R Douglas

NRD/vmg

File

May 12, 1964

Collins, Douglas & Elie
2211 Dryades Street
New Orleans, Louisiana

Dear Bob, Nils and Lolis:

I feel terrible about not having been in touch with you sooner. I hope you will forgive me. Things have been incredibly busy here.

I did, however, spend a couple of hours with Marvin, working on his argument in the Cox defamation case. Paul Chevigny will prepare the drafts in the Cox cases in the Supreme Court. In some respects Ronnie Moore's case was a clearer case, but I guess the Court didn't think it important enough to take jurisdiction.

I look forward to seeing you all soon. I love you all!

Regards,

Carl Rachlin
General Counsel

CR:rrl

MAY 4 1964

File

Criminal defam
Cox vs Louisiana

COPY

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

April 30, 1964

Denison Ray, Esq.
Cravath, Swaine & Moore
1 Chase Manhattan Plaza
New York, New York

(defamation case

Re: People v. Cox

Dear Denny:

I have received a note from Nils Douglas in New Orleans concerning our brief which reads in part as follows:

> "I am very happy with it. CORE will have to get another issue to raise money with **after** the state loses this case. Please extend my gratitude to Mr. Ray."

To it I can only add the expression of my own deep gratitude and many thanks.

Sincerely,

Marv

MMK:fs

cc: Carl Rachlin, Esq.

June 9th, 1964

This is a text of the telephone conversation:

The State of Louisiana
versus
B. Elton Cox

For the reasons assigned, the conviction and sentence annulled and set aside and the case is remanded to the District Court for a new trial.

There are two cases the same result in both cases.

JUN 10 REC'D

June 9, 1964

AIR MAIL

Mr. John F. Davis
Clerk of the United States
Supreme Court
Supreme Court Building
Washington, D. C.

Re: Cox v. Louisiana, 734 and 935

Dear Mr. Davis:

I am writing to you on behalf of the appellant in the above cases, in answer to your request to Mr. Rachlin for a designation of record. We find that the following would be the appropriate designation of record:

1. Trial Minutes (same in both cases)
2. Transcripts of records of District Court.
3. Opinions of the Supreme Court of Louisiana.

4. Applications for rehearings.

5. Petitions and Orders of
Stay of Execution.

Upon inquiring of your Mr. Rodak as to the cost of printing these documents, we find that the cost is far beyond the means of the appellant. Accordingly we are preparing papers for an application to proceed from this point on in forma pauperis or in the alternative to dispense with printing the record. These papers will reach you as soon as the affidavit is prepared by Rev. Cox.

Very truly yours,

PGC

Paul G. Chevigny

cc: Carl Rachlin, Esq.
Jack P.F. Gremillion, Esq.

Fine!!
Tell
Paul
Henry

JUN 25 REC'D

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

June 22, 1964

File

RE: COX v. LOUISIANA, No. 735;
COX v. LOUISIANA, No. 934;
OCT. TERM, 1963

Dear Sir:

The Court today entered the following order in the above-entitled cases:

> The motion of the appellant for leave to proceed further herein *in forma pauperis* is granted. It is ordered that the printing of the records be dispensed with.

Very truly yours,
JOHN F. DAVIS, Clerk
By
Assistant

Carl Rachlin, Esq.
165 W. 46th Street
New York, N.Y. 10007

June 26, 1964

Collins, Douglas & Elie
2211 Dryades Street
New Orleans, Louisiana 70113

Dear Bob, Nils and Lolis:

Enclosed is the certified copy of the decision of Judge Hawthorne in Louisiana v. Cox & Jelks, which I understand you want back.

The application for reargument is certainly an interestimg devemopment; I must confess to a certain wonderment as to the relationship between this application and the decision of the United States Supreme Court to hear reargument in the Garrison case.

Cordially,

Carl Rachlin
General Counsel

CR:rrl

ENC.

Org.

OK

Ck la Rev. Cox
will be there
in ~~N.O.~~ Baton Rouge on A.17
Fri. [illegible]

B. Elton Cox
P.O. Box 663
High Point
North Carolina 27261

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

f/u 11/9

November 4, 1964

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

NOV 5 1964

Mr. Marvin Rich
38 Park Row
New York 38, New York

Dear Marv:

Received word today Cox is to be retried in Baton Rouge on the defamation charges. The bonding company will probably require a new bond. Cox should be present for the arraignment on Friday, November 13, 1964.

NILS
Nils

N/g

We should call Nils & tell him to try to get postponement until after Garrison is decided

Cal called 11/6/64

Cox Def.

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
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NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

NOV 16 1964

November 13, 1964

Carl Rachlin, Esq.
38 Park Row
New York 38, New York

Dear Carl:

Cox was arraigned today. We have until November 30, 1964 to file special motions. Plan not to file them until the 30th. The trial is set for the same day.

— Noted H.

Murphy appeared at the arraignment and pleaded Cox in absencia (it's a misdemeanor). Murphy did a good job. He excepted to the notice and order of arraignment on the grounds that the remand of the State Supreme Court voided the prior appointment of D'Amico; therefore, a new order by the new Judge, Judge Lear, should have been made.

Respectfully,

COLLINS, DOUGLAS & ELIE

BY: Nils R. Douglas/amr

NRD/amr
CC: Marvin Karpatkin, Esq.
660 Madison Avenue
New York, New York

11/18 - CR spoke to Nils yesterday 11/17 \ advised Douglas to obtain an affidavit from Bernard Deutsch of New Orleans as to the interest of US Supreme Court as to the Cox defamation decision in the La. Sup. Court, & further suggested that it is important in light of this to obtain a continuance until after the US Sup Ct. decides the Garrison case.

Rec'd Nov. 17
Cox Def.

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

November 14, 1964

Murphy W. Bell, Esq.
971 South 13th Street
Baton Rouge, Louisiana

Dear Murphy:

I am in the process of reading the defamation transcript. The following are some ideas for you to evaluate. It is of the utmost importance that we keep in close communication so that the best ideas of all of us are not lost.

First: This is the hardest case we have handled to date. I am not optimistic about success. We will only win on a technicality. We must create technicalities. You have set a terrific example by your arraignment exceptor.

So far, I have only reviewed James E. Erwin's testimony.
Question: Why can't Jelks, Johnny Jones, Ronnie Moore and Marvin Robinson be used as witnesses for Cox. They were not used previously.

Question: The bill of indictment which was nolle prosequied, said:

> "...statements which tended to expose Judge Fred A. Blanche, Jr. to hatred, contempt, and ridicule and to deprive him of the benefit of public confidence and social intercourse."

The information which was used reads in pertinent part:

> "...said publication and expression being oral and to the effect that it was common knowledge that the oppressed Negroes who appeared in Judge Blanche's court had to pay a fee to Sargent Pitcher, Jr., District Attorney, which inured to his benefit to keep from going to the penitentiary."

Can we make hay out of the difference in the two charges?

We positively must challenge that part of the bill which says "...to the effect..." This is an at large charge which makes the defendant exposed to the conclusions of witnesses. Defamation in this instance is a crime of speech--of saying something. The only way Cox can be legally convicted is if he is charged with saying thus and so and the only reasonable (manifest?) conclusion excluding all other conclusions is that Pitcher and the Judge were accused by Cox of criminal activities. The requirement of the statute is proof of the effect of the words. You cannot legally get proof of the effect of the words, if you start out with the effect of the words. Maybe what I am saying is that generally a witness may testify to the substance of something he say or heard but in a defamation trial, the state is faced with an exception to that rule. Simply put, the state must allege words and then prove effect or tendency of the words.

Question: "Should we get the Judge to rule in advance of trial as to what the law is on whether a witness in a defamation case can testify to actual words, actual facts, or the effect of, the substance of...."

Failing in this cross examination extensive, hard hitting with previously prepared questions should be the order of the day.

Ex: Are you a friend of Pitcher? How long have you known him? Are you a friend of Blanche? Are you biased against Cox? Do you disagree with his views? Are you a member of the Citizens Council?, etc.

Question: Should we try both cases together?

I will send more questions as I go along.

This is what Cox maintains that he said:

> "While in jail, there for 53 days last winter some prisoners stated to me that they knew of men who said that they had paid a certain district attorney a fee to get them off the charges. They said that the district attorney supposedly paid part of the money to the judge who was handling the cases."

We ought to make up bland variations of this statement so as to slip them on the state's witnesses in an attempt to get them to agree with the made-up statement.

Respectfully,

COLLINS, DOUGLAS & ELIE

BY:____________________

NRD/amr

Cox Def.

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

November 16, 1964

COPY

Murphy W. Bell, Esq.
971 South 13th Street
Baton Rouge, Louisiana

Dear Murphy:

It is important that you read the case of N.Y. Times vs. Sullivan 84 S. Ct. 710. We should also check Chaplinsky, Terminello, Beauharnis, the N.O. Garrison case.

a

tello

We should get newspaper releases concerning reports of previous Cox speeches.

We should argue that placing the burden on the defendant of proving truth is contrary to the first, and fourteenth amendments.

We should also bring out the statements of the state's witnesses at the first trial that they would not report what Cox said, because they feared their employer would be sued. This shows the repressive effect of the defamation statute.

Maybe we should feel out D'amico, Pitcher, and Blanche as to whether they would nolle prosse the charges in exchange for a published apology.

We must urge as the Times case held that the state must prove actual malice before they can constitutionally convict.

One of the theories in our case should be that Cox criticized generally, the police, the judiciary, and the District Attorney's office. This we say is criticism of the government-not of Pitcher.

1 is it a violation
the right of dft
to be innocent
until proven guilty

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

COPY

Pitcher cannot personalize this.

Respectfully,

COLLINS, DOUGLAS & ELIE

BY________________________

NRD:CAJ

CC: Carl Rachlin, Esq.
58 Park Row
New York, New York

Marvin Karpatkin, Esq.
660 Madison Avenue
New York, New York

Cox Def.

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

November 16, 1964

Murphy W. Bell, Esq.
971 South 13th Street
Baton Rouge, Louisiana

Murphy:

I am now reading Gerald E. Moses testimony. It appears that we should attempt to bring out the full color all of what was said by the Pastor, Jelks and Cox. We will have to cross-examine every available person who was at the meeting. Maybe you could make a list of the Negroes who attended, so we could contact them. Cox should come down at least two days in advance of trial so we can pull out of him the facts. Maybe you could extract the last ounce of Ronnie's memory as to what happened in the meantime.

I will come up sometime shortly for a conference with you. Before I do this, I want to read the transcript in the other defamation cases.

Moses said Cox talked about several different officials - the D. A. - the police department - the judiciary.

Question: Will we put Cox on the stand?
I don't see how we can avoid doing so.
He must deny the statements.

Question: What kind of Judge is Lear?

Moses said Cox only mentioned Judge Blanche once.

Moses also said:

> "It was my impression when he made that statement that he was talking specifically about Sargent Pitcher and about Judge Blanche. I don't know when he referred to those names, but that was my impression of his talk.

Moses said Ervin made an affidavit.

Question: Shouldn't the affidavit be introduced into the record?
What did the affidavit say?
Who else made affidavits?

Moses said I thought the statement was too inflammatory to be published.

The testimony of Jack M. Owens:
works for Associated Press 10 years.
He is the best witness so far for our side
He said:

> So "Right off I don't recall any particular thing. there were several things said, but I don't remember any of the details to speak of. There was some general statements I could say that I understood that he was saying about them at the time.

Question: What was that that you understood him to say at the time?

Answer: The one statement in particular was to the effect that the judge and the district attorney had accepted some kind of pay-off or kick back for keeping men out of jail.

Question: Did he refer to any particular individuals being kept out of jail?

Answer: Not that I know of. He spoke of it as common knowledge, I believe that he referred to it as talk while he was in jail, it was talk among the prisoners.

Some questions we ought to ask each State Witness:

How many District Attorneys?
How many Judges?
What are their names?

The following statement of Owen's is enlightening

51 - "Right, If I may I think it is my duty to point out that in that particular statement, If I may, the only reference made was to the district attorney and the judge. I do not recall in the particular statement made that any persons name was mentioned."

Much of our case or the facts will turn on our ability to get the other witnesses for the state to say the same.

Murph. We must also bring out the fact that Cox had been convicted of Obst. Justice, Obst. the Sidewalk and Dist. the Peace. -- And the facts surrounding that incident.

Question: Had you heard the names of Mr. Pitcher and Judge Blanche mentioned during the course of his speech or talk he was making.

Answer: Yes.

Question: When was that made, prior to the statement which you h have just testified to or subsequently thereto?

Answer: Prior.

Murp. I wish you would make an appointment for an evening interview with Jelks and the Pastor of the church where the meeting was held for around Thursday or Friday this week.

52 - Owens --

"...As I recall it was a general statement and those are the figures that stay in my mind, four or five thousand was mentioned."

We, strategy - wise should spend 10 or 15 minutes on cross-examination with a belligerent state witness in an attempt to get him to cite a specific figure as the money amount and then let up abruptly and attempt to get him to admit some point more important to our case.

Owens said Patricia Tate, Inspector Triggs and some other deputies or policemen were there.

Pitcher did not call these people as State's witnesses - there must have been some reason. We should ask the other witnesses whether these people were there and subpoena them instanter if we think they will help our case.

Robert Wagner
T. V. Reporter. W. D. S. U. T. V.

Said church was located in Negro section of town.

Murphy is the church in Scottlandville or in Baton Rouge?

"I believe I heard most of it.?"

Question: "Did you hear what B. Elton Cox had to say?

Answer: "I heard his speech. ~~Parts~~ Part of it I listened to more intently than others."

Question: Do you recall whether or not the names of Judge Fred Blanche and District Attorney Pitcher were used in the course of his speech or talk?"

Answer: "Yes, sir, they were."

Question: What if anything, particularly did he say with reference to them?

Answer: Well, the one I remember most vividly is Mr. Pitcher. He said, was discussing Mr. Pitcher and he said that it was ironic that Negroes had helped put him where he was, or words to that effect, and then he started talking about - I am paraphrasing him here now - that all know or we have all heard about those Negroes who get into trouble who have to put up so much money, and he mentioned a figure, it was in the thousands of dollars, that is split between the district attorney and the judge or judges, I am not sure whether he used the singular or plural there.

Robert Wagner

Murp. Wagner's testimony is not too damaging on the trial we will be able to elicit evidence more favorable to us.

Additionally, Pitcher will be dead politically with the Negro once he takes the stand. We will ask him If he was a defense attorney before being D. A. - Did he defend Negroes. -- What percentage of his clientele was Negro -- When was he elected -- How many Negro votes he got. Did he seek the Negro vote. When is he up for re-election.

N. B. Wagner said "well we couldn't have used them anyway because they would be libelous and we would be sued for it I am sure."

Pitcher's testimony

We can severly limit Pitcher's testimony becase he was not at the meeting.

(a) If we feel that his testimony should be limited.

Some issue was made at the first trial of a hypothetical question to the effect "...if Cox said you took bribes would this be true."

We will not permit such questions. The question should have been: Have you taken bribes.

Pitcher's testimony can be limited to reputation and to a denial of bribes. We would prepare Propositions of Law and as soon as Pitcher is called to the stand file it and get the judge to rule on it.

We must prepare a Proposition of Law that Hypothetical Questions are not permitted.

N. B. We only have two weeks from the day you receive this letter before trial. All these matters must be done before then.

There is not much we can get from Blanche's testimony except to prepare a proposition of law limiting his testimony to reputation and a denial. We must also prepare a proposition of law on the Question of Blanche's apologizing to Cox for sentencing him.

Respectfully,

COLLINS, DOUGLAS & ELIE

BY:____________________

NRD/vmg

CC: Carl Rachlin, Esq.
38 Park Row
New York, New York

Marvin Karpatkin, Esq.
660 Madison Avenue
New York, New York

Cox Def.

November 18, 1964

Murphy Bell, Esq.
971 South 13th Street
Baton Rouge, Louisiana

Dear Murphy,

I have a copy of Nils' letter of 11/16/64 to you. May I stick my nose in and make a few suggestions.

(a) I think the brief in Garrison should be borrowed and read. There may be nuggets of gold worth the time in reading. Do the Court libraries have copies of the briefs? If not, perhaps you can borrow them from the parties.

(b) Can you get hold of the briefs in N.Y. Times v. Sullivan? This could be very helpful.

(c) If an honorable settlement can be made, I am all for it.

(d) The last point in Nils' letter is very good. I hope this can be done.

(e) The statute must not remove the burden of proof from the state. To the extent it does it is unconstitutional.

(f) I am inclined to think that Pitcher and the Judge should be asked (i) Has anyone criticized you orally or in writing as a result of what Cox allegedly said?
(ii) Who?
(iii) Has anyone praised you as a result or written to you giving support to you or orally said he supported you?
(iv) Were there any newspaper editorials or letters to the editor on this? They should be used.

(g) The Courtroom should be cleared of the witnesses so as not to hear each other.

(h) I think it terribly important to obtain a continuance, as Nils and I discussed, hopefully until after Garrison is decided.

I hope to see you soon.

Regards,

Carl Rachlin

cc: Nils Douglas, Esq.
Marvin Karpatkin, Esq.

Cox def

November 19, 1964

Murphy W. Bell, Esq.
971 South 13th Street
Baton Rouge, Louisiana

Dear Murphy:

I suggest that our theory should in part be that the N.A.A.C.P. meeting was a protest meeting, a protest against failure to abide by the Brown v. Bd. decision that General Comments were made criticising the Courts, the D.A. and the Police.

This chronology will show that Negroes were rightfully complaining and will show the biased administration of law by the District Attorney's office. Show Pitcher to be as bad as he is.

We maintain that in Criticising the government mention was made in the following matters:

Cox was charged in a bill of information with having violated or or about the 8th day of December 1961 L.S.A.-R.S. 14:26:

> "...conspire by entering into a combination of two or more persons for the specific purpose of committing a criminal mischief, and specifically to violate R.S. 14:59 (6), R.S. 14:100.1, and R.S. 14:103.1."

He was acquitted of this charge.

Cox was charged in a bill of information with having violated on December 15, 1961 L.S.A.-R.S. 14:401 (Obstructing Justice). This case is presently before the U.S. Supreme Court. Bill of Information Number 42-201.

Cox was charged in a bill of information with having violated on December 15, 1961, L.S.A.-R.S. 14:103.1 (Disturbing the Peace). This case is presently before the U.S. Supreme Court. Bill of Information Number 42-202.

Bryan Clemmons, Wingate White and
John Christian, The Latter In His
Official Capacity As Mayor-President,
And As Such Mayor of The City of
Baton Rouge, Louisiana

vs.

Congress of Racial Equality, John Doe
and Mary Doe

Was a case seeking a temporary restraining order preliminary and permanent injunctions against C.O.R.E. The case number was Miscellaneous, Number 624. It was filed on December 15, 1961 and signed by Judge West on December 15, 1961. On January 31, 1964 by order of the 5th Circuit Court of Appeals Judge West vacated the permanent injunction he had signed.

a.) Introduce the entire record of the District Court.

City of Baton Rouge Ex Rel
John Christian, Mayor President,
City of Baton Rouge

v.

Congress of Racial Equality and all
Representatives, Particularly Rev.
B. Elton Cox, Patricia Tate, Jerome Smith,
Ronnie M. Moore, Weldon J. Rougeau, Julia Aaron,
Doris Castle, David Dennis, Thomas Peete and
Acie Belton

Was a case seeking a temporary restrainig order, preliminary and permanent injunctions against C.O.R.E. It was filed on December 15, 1961 and signed on December 15, 1961 by three Judges, Fred A. Blanche, Jr., C. A. Barnett, and Fred S. LeBlanc. That was case Number 85,578.

On February 12, 1962 Ronnie M. Moore was charged in a bill of information, number 42-604 with having "between the dates of December 8, 1961 and January 18, 1962" violated L.S.A.-R.S. 14:115, Criminal Anarchy. Ronnie has never been tried on this case.

On March 5, 1962 the Grand Jury of East Baton Rouge Parish indicted B. Elton Cox and Arthur Jelks in case number 44-030 with defamation of District Attorney Sargent Pitcher, Jr. The defamation allegedly occurred on September 4, 1962.

On March 5, 1962 the Grand Jury of East Baton Rouge Parish indicted B. Elton Cox and Arthur Jelks in case number 44-031 with defamation of Judge Fred A. Blanche, Jr.

On March 5, 1962 the Grand Jury of East Baton Rouge Parish indicted Ronnie M. Moore and Patricia Ann Tate with defamation of the Grand Jury. This was case number 44-133. The defendants were tried, and convicted but not sentenced.

On September 28, 1962 in Bill of Information number 44-274 Ronnie M. Moore and Patricia Ann Tate were charged with defamation of the Grand Jury.

On October 1, 1962 Cox was charged and Jelks was charged with defamation of Judge Blanche. This was in bill of information number 44-287.

On October 1, 1962 Cox was charged and Jelks with defamation of District Attorney Pitcher. This was bill of Information number 44-288.

On November 9, 1962 the minutes of the court showed in case number 44-287 that the information was amended.

On November 29, 1962 Judge Fred S. LeBlanc found Pearl Lee George in contempt for sitting on the white side of the court.

Rec'd 11/23/64

THE SPEECH OF REV. B. ELTON COX

On September 4, 1962

Cox prior to the meeting which resulted in the defamation had been in jail in Statesville for trespassing at the Howard Johnson. He got 30 days and was out on a $750.00 bond. Cox thought the meeting was a Core meeting but found out it was an N.A.A.C.P. meeting, Core had postponed their meeting. Jelks was talking and he introduced Cox. Cox had a prepared script. He mentioned that he was the field secretary for Core and talked for about 30 or 45 minutes. He had arrived at about 8:40 the meeting was supposed to have started at 8 and it started later. The meeting was over by about 10 P.M. An offering was taken after Cox spoke. Cox said that Arthur Goldberg was on Core's Advisory Committee before he was a Supreme Court Justice and when I get there, there will be one vote for freedom. Not for Negroes, Not for Jews, Not for Whites but for freedom. Its foolish to have a meeting of this type in America, the land of the free and the home of the brave. Citizens have to fight for their rights. Commended Jelks on his School stand. The audience was responsive. Responded more to Jelks than they did to Cox. People clapped at everything. When Goldberg became a member of the President's cabinet he resigned from the Advisory Committee. I will never forget that night, January 31st, when District Attorney Pitcher slapped his hand on the desk and said I got him when Judge Blanche sentenced me. He thought he tricked me and he thought he tricked the Judge but that he tricked himself. And thats why I am back here tonight. Pitcher seems to have a lot of influence over some of the Judges and some of the Judges seem to have a lot of influence over Pitcher. Pitcher lived off of Negroes - lots of his clients were Negroes. A boy in jail told me this.

We'll never forget the December 15th demonstration. I remember the Major who released the gas. They tear gassed us three times. A tear gas shell hit my leg. My sport coat was torn off. I was arrested and when the shift changed they put Cox in solitary confinement. They always ask us to go back to Africa. I'll go back to Africa if all those French origin go back to France, If all of those of German origin go back to Germany and if the Irish go back to Ireland. And If I went back to Africa I would not be able to find my grandmothers mother who made me the color that I am. They integrate at night and I want to integrate in the day.

There are 33 ins, sit-ins, stand-ins, flush-ins, wade-ins, pray-ins, marry-ins. Man would marry a rattle snake if he got close enough.

They always say that the main reason Negroes want to integrate is to marry white persons. A survey in Philadelphia of interracial marriages in which the female was white shows that 73% of them came from the South. I lived in Chicago and did not see more than 2 or 3 interracial couples. The white man in the South thinks he has the white woman fooled. He tells them I am protecting you from this black man. I have never advocated interracial marriages. I have advocated removing the restrictions against interracial marriages. Sweet singing Jimmy Davis is more concerned about his horse than Negroes rights. While we are arguing about who sits at lunch counters the Russians, our real enemies, are polishing guns to turn toward Mobile, New Orleans and Miami, Rather than live in segregation I'd rather be dead and let the earth worms eat me for dessert. I'm too sweet for the main course.

I was in Africa running around with a grass skirt with a ring in my nose and eating my brother-in-law for dinner when the white man came over and took me and chained me and taught me their god and Christian ethics and now that I try to propound their theories they put me in jail.

Same the Sexton cleans up the church but has to leave before prelude time. If he is there he is in the basement listening over the loudspeaker while they sing OH HOW I LOVE JESUS.

N.B. Inspector Trigg made a short speech about peacefully pursuing goals.

Cox was not present for all of Jelks speech. The question of bribery came up also excessive bonds.

Cox talked about how the segregationists use techniques to slow up the drive for integration. Intelligent college students are put in jail. Young ministers of the gospel who hold degrees are charged with anything from distrubing the peace to rape. The 8th amendment says excessive fines and imprisonments are not to be imposed. I have more money on my head than Jesus had on his. When men had gone down to be interrogated and came back they had been beaten.

Somewhere in this speech Cox said:

> "While in jail here the prisoners said that
> they had known persons who paid $3,000.00
> and the D.A. shared the money with the Judge
> who handled the case."

Rec'd 11/23/64

PROPOSITIONS OF LAW.

The topics commented on by B. Elton Cox at the September 4, 1962 N.A.A.C.P. meeting were vital to the interests of the Parish of East Baton Rouge, therefore, his speech was covered by the constitutional protections of the First and Fourteenth Amendments.

The State of Louisiana must, in order to prove defamation, show that there was a clear and present danger to a substantial interest of the State that it has a right to regulate.

The following sections of Louisiana Law dealing with defamation are inseparable and must be read in pari material:
L.S.A.-R.S. 14:47; 14:48; 14:49; 14:50; 15:247; 15:443 and 15:227.

State Criminal laws punishing statements allegedly defamatory of public officials are unconstitutional on their face being a previous restraint on free speech.

Only persons who witnessed an event can testify as to what they saw or heard.

A bill of information for oral criminal defamation in order to be constitutionally correct must detail the specific words on which the state relies for conviction.

A bill of information for oral criminal defamation cannot constitutionally charge in pertinent part that "...said publication and expression being oral and to the effect that it was common knowledge that oppressed Negroes who appeared in Judge Blanche's court had to pay a fee to Sargent Pitcher, Jr., District Attorney, which inured to his benefit to keep from going to the penitentiary." Said information must charge the specific words as actually said and the full context in which they were said.

Where one is charged with oral criminal defamation of public officials for statements allegedly made in a speech the entire contents of the speech must be given so that proper emphasis can be given to the alleged defamatory statement.

A bill of information for oral criminal defamation cannot constitutionally charge in pertinent part that: "...said publication and expression being oral and to the effect that it was common knowledge that oppressed Negroes who appeared in Judge Blanche's court had to pay a fee which inured to Judge Blanche's benefit to keep from going to the penitentiary." Said information must charge the specific words as actually said.

L.S.A.-R.S. 14:47; 14:48; 14:49; 14:50; and 15:247 are all unconstitutional on their face because they are unconstitutional exercises of the State police power.

L.S.A.-R.S. 15:247 is unconstitutional on its face because it violates the Sixth and Fourteenth Amendments of the United States Constitution.

Before any witness to an alleged oral defamatory statement can testify as to the effect of the statement he must testify as to the actual words the speaker said.

In a criminal prosecution for oral defamation the defendant's guilt or innocence is to be based on facts and hypothetical questions asking if this were said or if that were said are not under any circumstance permissable.

L.S.A.-R.S. 14:47 is unconstitutional on its face in violation of the first and fourteenth amendment to the United States Constitution because it fails to set out an ascertainable standard of guilt.

The test to be used in applying L.S.A.-R.S. 14:47 to determine whether or not the alleged defamatory remarks tended to have the effect prohibited is an objective test.

L.S.A.-R.S. 14:47; 14:48; 14:49; 14:50 and 15:247 are all narrowly drawn statutes.

L.S.A.-R.S. 14:47; 14:48; 14:49; 14:50; 15:247; 15:443 and 15:227 should all be narrowly construed because free speech as protected by the first and fourteenth amendments of the United States Constitution are invoked here.

Copy to Mr Kurpatkin

CORE Legal Dept.
Rec'd 11/23/64

EBERHARD P. DEUTSCH
R. EMMETT KERRIGAN
HARRY P. STILES (1902-1953)
BRUNSWICK G. DEUTSCH
MARIAN MAYER BERKETT
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DEUTSCH, KERRIGAN & STILES
COUNSELLORS AT LAW
HIBERNIA BANK BUILDING
NEW ORLEANS 70112

CABLE ADDRES
"DEKEST"
NEW ORLEANS

November 20, 1964

Dear Mr. Douglas:

In response to your request, you are advised that the case of Garrison versus State of Louisiana, No. 4, October Term, 1964, Supreme Court of the United States, involves the constitutionality of Louisiana RS 14:47 et seq. (the Louisiana criminal defamation statute).

It is contended, in that case, that the cited statute is invalid under the First and Fourteenth Amendments, particularly insofar as it involves defamation of public officials.

This case was argued in the Supreme Court of the United States on April 22, 1964, and was, on June 22, ordered to be re-argued. The case was re-argued on October 19, and has now been taken under advisement by the Court - as you will note from the attached photo-copies of pages 7011 and 8021 of the current volume of the CCH Supreme Court Reporter.

Trusting that this is the information you wanted, and assuring you again of my readiness to be of any possible further assistance, I am,

Sincerely,

Eberhard P. Deutsch

Nils R. Douglas, Esq.,
2211 Dryades Street,
New Orleans 70113.

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

November 20, 1964

NOV 23 1964

Civ defamation

Carl Rachlin, Esq.
38 Park Row
New York 38, New York

Dear Carl:

I spoke to Mr. Deutsch the day after you suggested I call. He was out of town on the day of your call.

Enclosed find photostat of letter he agreed to send. He was reluctant to give an affidavit for he felt that the court could take judicial notice of the Garrison Case. I am preparing the Motion for Continuance which will be filed Monday, November 23, 1964.

I will let you know what happens.

Respectfully,

Nils

NILS

N/vmg

ENCL: 1

Spoke to Mr. [illegible]
N.D. on phone –
Garrison case makes
Deutsch letter irrelevant –
N.D. thinks we will
have to go

Cox def

November 24, 1964

Nils R. Douglas, Esq.
2211 Dryades Street
New Orleans, Louisiana

Dear Mr. Douglas,

In reply to your recent note asking for a transcript in the Cox case, Mr. Rachlin says that, since we went as paupers, the Supreme Court got our only copy, so we do not have the papers to send you.

Sincerely,

Hannie de Leeuw

P.S. Enc copy of Times article
on Garrison decision

Desk of
Nils R. Douglas
Attorney

Dear Carl

NOV 2 3 1964

Do you have the trial transcript in the dist. the peace, obst. the sidewalk and obst. justice — Cox cases. If so please send it to me. I need it for the defamation trial. I have looked for it here but can't find it.

Nils

MINTZ & BIRZON
ATTORNEYS AND COUNSELLORS AT LAW

JOSEPH D. MINTZ
PAUL IVAN BIRZON

AREA CODE 716

605 BRISBANE BUILDING
BUFFALO, NEW YORK 14203

856-8800

September 8, 1965

SEP 9 1965

CORE
38 Park Row
New York 38, New York

Cox v
Louisiana
copy of brief

Attention: Carl Rachlin, Esq.

Dear Mr. Rachlin:

Enclosed herewith please find your Brief in Cox v. Louisiana for the use of which you have my utmost gratitude.

I have received a copy of the Cox Brief from Lester Greenberg and as soon as my secretary has completed making certain abstracts thereof I shall return the same to your office.

Again my many thanks to you for permitting me to peruse these documents.

Yours very truly,

MINTZ & BIRZON

BY: PAUL IVAN BIRZON

PIB:ak
enc. 1

Cox Defam.

Case dismissed
December 10, 1964

MSS SEL-FRE REFERENCE - STATE OF LOUISIANA V. DAVIS, J.W., 1963

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NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA NO. 47-225

VS

J. W. DAVIS CRIMINAL DOCKET

* *

MOTION FOR APPEAL

AND NOW INTO OPEN COURT, through undersigned counsel, comes J. W. Davis who suggests to the Court that the record herein shows error to his prejudice, a miscarriage of justice and same constitutes a violation of his constitutional rights, and that he is desirous to appeal to the Honorable Supreme Court of the State of Louisiana;

WHEREFORE, he prays that he be granted a suspensive appeal to the Honorable Supreme Court of the State of Louisiana, returnable in accordance with law.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

MURPHY W. BELL
917 SOUTH 13TH STREET
BATON ROUGE, LOUISIANA

BY: ______________________________

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA NUMBER 47-225

vs.

J. W. DAVIS CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER ONE

BE IT REMEMBERED, that before entering on the trial of this case your defendant, having heard the information read and protesting that he is not guilty of the offense set out therein, filed the following Motion Challenging General Jury Venire a copy of which is attached hereto and made a part hereof the same as if copied in extenso.

That on Monday, December 2, 1963 a hearing was had contradictorily with the State on the said motion at which time Mr. Peyton Parker, an attorney of nine years experience, who had been on the District Attorney's staff for nine months was called as a witness for the defense. The following transpired at pages 6-9 of the transcript.

"Q. Have you ever seen a criminal case involving a petit jury in which a Negro sat on a jury which sat in judgment?

The Court:

I don't think it makes any difference whether he has ever seen it or not. That is no weight whatsoever, even if he says he never saw one. I have had Negroes on a petit jury trying white people, and that is no evidence. Go ahead. Get along.

The Court:

Wait a minute don't clutter up the record with an answer to that. It has no weight whatsoever.

Mr. Douglas:

Well, if your Honor Please, --

The Court:

You could call a thousand people in here and asked them if they ever saw a Mexican on a jury or a Negro on a jury and it isn't worth two bits. Go ahead.

Mr. Douglas:

Well, if your Honor Please, there -- the cases are legion, there are at least --

The Court:

There may be, but I am not going into that. It is an utter waste of time. Go ahead.

Mr. Douglas:

Am I to understand that we are not going to be permitted to ask--

The Court:

Not that kind of question, you certainly are not. It has no bearing whatsoever. It is purely negative testimony if they say they never saw one and it doesn't make a bit of difference whether they did not see one or did see one. It does not go to the merits of this motion.

A. Judge, I would like to say this with reference to his question --

The Court:

The only thing you have a right to explain is your answer.

A. Well, I would like to explain my answer, Judge. I will say this, the question of a Negro serving on a jury was never brought to my attention. When I came to the District Attorney's office I was never told or even-I never discussed the thing. Judge Favrot never said to me or neither did any other District Attorney not to have a Negro on the jury. I presumed that it was up to our own discretion as to whether or not we would exercise a challenge on the basis of a man's race. I suppose he left it to each individual District Attorney. He certainly never talked to me about it.

Mr. Douglas:

I would like to record to show that I am objecting to the ruling of the court with reference to the question I asked Mr. Parker 'had he ever seen a Negro who sat in judgment on a criminal case' and reserve a bill of exception making the question, the statement of the court and the objection all a part of the bill of exception.

Defendant first submitting this his formal Bill of Exceptions to the District Attorney, now tenders the same to the court and prays that the same be signed and sealed by the Judge of this court pursuant to the statute in such case made and provided which is done accordingly this day of , 1964.

JUDGE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA NUMBER 47-225

vs.

J. W. DAVIS CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER TWO

BE IT REMEMBERED, that before entering on the trial of this case your defendant, having heard the information read and protesting that he is not guilty of the offense set out therein, filed. A Motion Challenging General Jury Venire which is attached to Bill of Exception Number One and which is made a part thereof the same as if copied in extenso.

That on Monday, December 2, 1963 a hearing was had contradictorily with the state on the said Motion and Mr. Joe J. Sharp a member of the East Baton Rouge Parish Jury Commission was called as a witness for the defendant and the following transpired:

Transcript pages 45-48

"Q Now Mr. Sharp, I understand that from your General Jury Venire list twenty names are selected to serve as Grand Jurors?

A. That right.

Q. And these twenty persons who are called constitute the Grand Jury Panel, is that correct:

A. Right,

The Court:

Well, we are not concerned here with the selection of the Grand Jury. This man was not indicted by the Grand Jury. This is not a Grand Jury case in which it was presented to the Grand Jury.

Mr. Douglas:

If your Honor Please, we feel that it is relevant that the method of selection of the persons as a matter of fact the persons chosen on the Grand Jury Venire come from the general jury venire and of necessity the system used in the Grand Jury proposition is a part of the --

The Court:

If it was pertinent to the case I would say that is true, but that is not pertinent to this case because he was not indicted by the Grand Jury and the Grand Jury has had nothing to do with this case.

Mr. Douglas:

Do I understand correctly then that my question--

The Court:

You are not attacking the Grand Jury list of Grand Jurors as a manner in which the Grand Jury is selected anyhow. Your Motion has nothing to do about the Grand Jury that I see, is that correct or not?

Mr. Douglas:

Well, it is implicit in the motion, Your honor.

The Court:

Not unless it is put there it is not.

Mr. Bell:

In Artcle 2, Your Honor, it says that Negroes have been systematically excluded from the Grand Jury Venire from which the Grand Jury is selected and it is all part of the same plan. I think that is what co-counsel is getting at.

The Court:

Well, you are concerned here and the Court is concerned here only with the general jury venire under this motion and if some other body is selected from that it has nothing to do with this case. The only thing that is selected from the general Jury venire pertinent to this case is petit juries. How they get the Grand Jury and what it does has nothing to do with this case. You have attacked the general jury venire. You are not attacking the Grand Jury and the Grand Jury has not indicted this defendant, so go ahead.

Mr. Douglas:

If my question was not permitted, your Honor, I would like to object and reserve a bill of exception making the question and the ruling of the court all a part of the bill of exceptions.

Defendant first submitting this his formal Bill of Exceptions to the District Attorney, now tenders the same to the court and prays that the same be signed and sealed by the Judge of this court pursuant to the Statute in such case made and provided which is done accordingly this day of , 1964.

JUDGE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA	NUMBER 47-225
vs.	
J. W. DAVIS	CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER THREE

BE IT REMEMBERED, that before entering on the trial of this case your defendant, having heard the information read and protesting that he is not guilty of the offense set out therein, filed a Motion Challenging General Jury Venire which is attached to Bill of Exception Number One and which is made a part hereof the same as if copied in extenso.

That on Monday, December 2, 1963 a hearing was had contradictorily with the state and Mr. Sidney Lacy, an East Baton Rouge Parish Jury Commissioner was called as a witness for the defense and the following occurred:

Transcript pages 59-60

"Q. Is it not a fact, Mr. Lacy, that for the last six or seven Grand Juries there has been only one Negro placed on this Grand Jury?

The Court:

Well, I say again the Grand Jury is not at issue here, but I can also say that that is not true. We have two or three or four members of the colored race in the Grand Jury list every time they come up. They are not always selected when they are called by lot, so lets stay away from the Grand Jury and go on to the petit jury. I am not going to waste time taking testimony about the Grand Jury.

Mr. Douglas:

We would like to object and reserve a formal bill of exception and make the question and the ruling of the court a part of the bill.

The Court:

The selection of the Grand Jury could not possibly have anything to do with this case, but go ahead and take your bill. If they never had a colored person on the Grand Jury this man would not be prejudiced because he wasn't indicted by the Grand Jury.

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided which is done accordingly this day of , 1964.

JUDGE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA NUMBER 47-225

VS

J. W. DAVIS CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER FOUR

Be it remembered, that before entering on the trial of this case, your defendant, having heard the information read and protesting that he is not guilty of the offense set out therein, filed a Motion Challenging General Jury Venire which is attached to Bill of Exception Number One and which is made a part hereof the same as if copied in extenso. That on Monday, December 2, 1963 a hearing was had contradictorily with the State, and Mr. Sidney Lacy an East Baton Rouge Parish Jury commissioner was called as a witness for the defense and the following occurred:

TRANSCRIPT page 61 and 62

By Mr. Douglas:

Q. Mr. Lacy, do you believe that Negroes are any less qualified to serve as jurors than white persons?

The Court:

I don't think it makes any difference what he believes. It is what he does.

Mr. Douglas:

Am I to understand that the question is not permitted, Your Honor?

The Court:

That's right. You are going too slow. I am going to have to get along.

Mr. Douglas:

I would like to object and reserve a formal bill of exception and make the question and the ruling of the Court a part of the Bill of Exceptions.

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided which is done accordingly this __________ day of ________________ 1964.

____

JUDGE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA NUMBER 47-225

VS

J. W. DAVIS CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER FIVE

Be it remembered that, before entering on the trial of this case, your defendant, having heard the information read and protesting that he is not guilty of the offense set out therein, filed a Motion Challenging General Jury Venire which is attached to Bill of Exception Number One and which is made a part hereof the same as if copied in extenso. That on Monday, December 2, 1963, a hearing was had contradictorily with the State, and Mr. Sidney Lacy an East Baton Rouge Parish Jury Commissioner was called as a witness for the defense and the following occurred:

TRANSCRIPT PAGES 63 and 64

Q. Are you in sympathywith any segregationist groups, Mr. Lacy?

A. If I am what?

Q. Are you in sympathy with any segregationist groups?

Mr. Roy:
Objection.

The Court:
Sustained.

Mr. Douglas:
I would like to except and reserve a bill of exceptions and make the question, the objection of counsel and the ruling of the Court a part of the bill.

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided which is done accordingly this __________ day of ____________________ 1964.

____
JUDGE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA	NUMBER 47-225
vs.	
J. W. DAVIS	CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER SIX

BE IT REMEMBERED, that before entering on the trial of this case your defendant, having heard the information read and protesting that he is not guilty of the offense set out therein, filed a Motion Challenging General Jury Venire which is attached to Bill of Exception Number One and which is made a part hereof the same as if copied in extenso.

That on Monday, December 2, 1963, a hearing was had contradictorily with the state and Mr. Carl V. Dawson an East Baton Rouge Parish Jury Commissioner was called as a witness for the defense and the following occurred:

Transcript Page 69

"Q. Some of these questions I don't like to ask, Mr. Dawson, but I have a duty to perform so I hope you will bear with me. Are you in sympathy with any segregationists group?

The Court:

I am not going into those things. It would not make a bit of difference if he was the leader of the integrationists. It is what the Jury Commission does, not what he believes.

Mr. Douglas:

I would like to except and reserve a formal bill of exception and make the question and the ruling of the court part of the bill of exception.

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the court and prays that the same be signed and sealed by the Judge of this court pursuant to the statute in such case made and provided which is done accordingly this   day of   , 1964.

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA NUMBER 47-225

VS

J. W. DAVIS CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER SEVEN

Be it remembered, that before entering on the trial of this case, your defendant, having heard the information read and protesting that he is not guilty of the offense set out therein , filed a MOTION CHALLENGING GENERAL JURY VENIRE which is attached to Bill of Exception Number One and which is made a part hereof the same as if copied in extenso. That on Monday, December 2, 1963 a hearing was had contradictorily with the State and Mr. W. A. Cooper an East Baton Rouge Parish Jury Commissioner was called as a witness for the defense and the following occurred:

TRANSCRIPT PAGE 83

Q. Are you a member of any group sympathetic to segregation, Mr. Cooper?

The Court:

Don't answer that question.

Mr. Douglas:

I except, making the question and the ruling of the Court a part of the Bill of Exception. I tender the witness.

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided which is done accordingly this ____________ day of __________________ 1964.

____

JUDGE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA NUMBER 47-225

vs.

J. W. DAVIS CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER EIGHT

BE IT REMEMBERED, that before entering on the trial of this case your defendant, having heard the information read and protesting that he is not guilty of the offense set out therein, filed the following Motion Challenging General Jury Venire which is attached to Bill of Exception Number One and which is made a part thereof the same as if copied in extenso.

That on Monday, December 2, 1963, a hearing was had contradictorily with the state on the said motion at which time Mr. Perry M. Johnson, Clerk of Court for the Nineteenth Judicial District and ex officio chairman of the East Baton Rouge Parish Jury Commission was called as a witness for the defense and the following transpired:

Transcript Page 88

"Q. Mr. Johnson, are you in sympathy with any segregationist group?

The Court:

Don't answer that question.

Mr. Douglas:

I except and reserve a formal bill of exception and make the question and the ruling of the court a part of said bill.

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the court and prays that the same be signed and sealed by the Judge of this court pursuant to the statute in such case made and provided which is done accordingly this day of , 1964.

JUDGE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA NUMBER 47-225

vs.

J. W. DAVIS CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER NINE

BE IT REMEMBERED, that before entering on the trial of this case your defendant, having heard the information read and protesting that he is not guilty of offense set out therein, filed a Motion Challenging General Jury Venire which is attached to Bill of Exception Number One and which is made a part hereof the sme as if copied in extenso.

That on Monday, December 2, 1963 a hearing was had contradictorily with the state on the said motion. That after the trial of the Motion Challenging the General Jury Venire the court proceeded to try the Motion to Quash. At this point the following transpired:

Transcript Pages 138-141

The Court:

You have a motion to Quash the general venire, Well, want to say anything I will be glad to let you have that opportunity. I am ready to rule on the Motion.

Mr. Douglas:

I think you took under advisement, Judge, the supplemental Subpoena duces tecum to the Clerk of Court and we haven't had a ruling on that.

The Court:

Well on the Motion to Quash the general jury venire it is based entirely on the question of discrimination by race. There is no evidence offered here that there has been any discrimination by race either in the drawing of the general venire or the drawing of the petit juries and I can say that I know for a fact in this parish there has not been any for many years. I would/~~say~~ not that was not true twenty-five or thirty years ago but I would say that it has been true in my experience here as Judge since October, 1951. We just don't do it. We always have colored people on the jury venires. I don't say that it would apply to every jury venire that is called up, but I believe it does. There is never a petit jury that does not contain any number of colored people. I judge that by the number that are called when the jury is being selected. Sometimes we exhaust the jury and I never tried to count them, but I know that there has been more than one or two, it has been no token, it has been a substantial number on every venire. Why they have been challenged in those cases where they have been challenged it is not for me to say. I don't know. I know a great many of them have served. Very often we have colored people on a petit jury. Therefore, they could not be excused because of race entirely and the motion to quash the general venire is overruled.

Mr. Douglas:

If your Honor Please, before I except to the Motion to Quash the general jury venire have you ruled on the Supplemental Motion to the Clerk of Court?

The Court:

No more than I did when you brought it to me to sign. I ruled on it at that time in my office and I have not done anything about it since and don't intend to.

Mr. Douglas:

I would like the record to show that counsel for the defendant excepts to the ruling of the Court on the Motion to set aside the general jury venire and would like to make as a part of the exception the written motion, the original Subpoena duces tecum on the Clerk of Court, the Supplemental duces tecum to the Clerk of Court, the testimony of all the witnesses and all the documents introduced into evidence and the ruling of the court all a part of the bill of exception.

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the statute in such case made and provided which is done accordingly this   day of   , 1964.

JUDGE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA NUMBER 47-225

vs.

J. W. DAVIS CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER TEN

BE IT REMEMBERED, that before entering on the trial of this case your defendant, having heard the information read and protesting that he is not guilty of the offense set out therein filed a Motion to Quash which is attached hereto and made a part hereof as if copied in extenso. On Monday, December 2, 1963 a hearing was had contradictorily with the state and the Motion to Quash was overruled at which time an exception was timely made asking that the motion, along with the testimony adduced and the ruling of the court all be made a part of the bill of exception.

Defendant first submitting this his formal Bill of Exceptions to the District Attorney, now tenders the same to the court and prays that the same be signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided which is done accordingly this day of , 1964.

JUDGE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. 47-225 STATE OF LOUISIANA CRIMINAL DOCKET

VS.

FILED:________ J. W. DAVIS DPY. CLK:______

* * * * * * * * * * * * * * * * *

MOTION TO QUASH

Now into court through undersigned counsel comes J. W. Davis and moves to Quash the Bill of Information against him for the following reasons:

Defendant has been denied due process and equal protection of the laws, all as guaranteed by the XIV Amendment to the Constitution of the United States of America for this to-wit:

a) Defendant alleges and avers that the Offices of the East Baton Rouge Sheriff and the Offices of the District Attorney have set up a special detail of officers to handle complaints in regard to worthless and nsf checks.

b) That these officials have formulated and evolved certain rules or procedures pertaining to the handling of bad check offenders.

c) Defendant alleges on information and belief that these special officers as a rule always contact the alleged writer of bad checks on first offense and warn him of the impending issuance of a warrant of arrest if the alleged nsf or worthless check is not paid at a prescribed time.

d) Defendant avers that because of his connection with the Congress of Racial Equality and because of his actions in protesting against racial segregation in Iberville Parish where he resides, these facts being communicated to the officials of East Baton Rouge, he, being a member of the Negro race was arbitrarily denied the opportunity to take advantage of the regulation as mentioned herein above.

e) Defendant alleges and avers that the elected officials of the State of Louisiana and particularly of East Baton Rouge Parish subscribe to a policy of segregation based on race and persons who advocate equality of the races or integration of Negroes into the mainstream of society are denied benefit of the various ameliorating customs, usages, regulations as pointed out hereinabove; such denials, defendant avers is a violation of the due process and equal protection of the laws clauses to the Fourteenth Amendment.

WHEREFORE, your mover prays that after due proof had the information against him be declared void and of no effect.

Robert F. Collins
Nils R. Douglas
Lolis E. Elie
2211 Dryades Street
New Orleans, Louisiana

By: ______________________________

Murphy W. Bell
971 South 13th Street
Baton Rouge, Louisiana

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared: MURPHY W. BELL who, after first being duly sworn did depose and say that he is one of the attorneys in the above matter and that he prepared the above and foregoing motion and that all the facts and allegations therein contained are true and correct to the best of his knowledge, information and belief.

____
MURPHY W. BELL

SWORN TO AND SUBSCRIBED BEFORE ME, this ________ day of September, 1963.

____
NOTARY PUBLIC

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA NUMBER 47-225

vs.

J. W. DAVIS CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER ELEVEN

BE IT REMEMBERED, that before entering on the trial of this case your defendant, having heard the information read and protesting that he is not guilty of the offense set out therein, filed an exception to the Jurisdiction of the Court a copy of which is annexed hereto and made part hereof as if copied in extenso.

On Monday, December 2, 1963 a hearing was had contradictorily with the state at the culminationof which the court overruled the exception. Counsel for defendant timely excepted making the Motion and the testimony thereon a part thereof.

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the statute in such case made and provided which is done accordingly this day of , 1964.

JUDGE

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NO. 47-225

STATE OF LOUISIANA
VS
J. W. DAVIS

CRIMINAL DOCKET

FILED: ___________

DPY. CLK: ___________

* * * * * * * * * * * * * * * * *

EXCEPTION TO JURISDICTION

Now into court through undersigned counsel comes J. W. Davis and moves to dismiss the action against him for the reason that this court does not clearly have jurisdiction over the alleged crime. Defendant is charged with violation of LSA-R.S. 14:71 Issuance of a worthless check. This check was drawn not on a bank located in the Parish of East Baton Rouge but on a bank located in Iberville Parish. Defendant maintains alternatively that LSA-R.S. 15:13 governs thus the proper place for the trial of this matter is in the Eighteenth Judicial District Court.

WHEREFORE, your mover prays that after due proof had the Court recognize that it does not have jurisdiction in this case and alternatively that this Court permit the defendant to be tried in the Eighteenth Judicial District Court.

BY ATTORNEYS:

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

BY: ______________________________

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA NUMBER 47-225

vs.

J. W. DAVIS CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER TWELVE

BE IT REMEMBERED, that on Thursday, December 12, 1963 immediately prior to the beginning of the trial herein the following transpired:

Transcript Pages 142-148

Mr. Douglas:

If Your Honor please, the court will recall that we filed a motion to set aside the general jury venire and the petit jury venire. We now ask the court permission to poll the petit jury venire so that we can determine the total number of Negroes on the Jury venire and also -- or we can get the District Attorney to stiuplate.

The Court:

I don't know myself. I could not tell you to save my life. Maybe he knows.

Mr. Roy:

Well it is the State's position simply that he has had his day in court on these motions and the court has ruled---

The Court:

I am not going to grant any motion now on that, I can tell you. I have already passed on that motion. If you want the jury venire polled we will poll them.

Mr. Douglas:

Thats right Your Honor, but after the petit jury is selected and before it is sworn we have a written motion moving to set aside the petit jury and--

The Court:

That has not been passed on yet?

Mr. Douglas:

No, Your Honor.

The Court:

Well, I don't know what information polling the jury is going to be because all they do is holler "here" when their names are called.

Mr. Douglas:

Well, the request, Your Honor, was to poll them as to race.

The Court:

Well, we aren't going to do that. If you want to find out who is Greek, American, German and so forth and is there are colored people on there, why, you find it out. I don't know how you are going to find it out unless you go around and ask them.

Mr. Douglas:

Well, this is what we want to do, Your Honor, before the trial starts, before the voir dire starts and because we have filed a Motion Challenging the General Jury Venire and because we anticipate filing a Motion to Challeng the Petit Jury it is the defense's position that we have a right to determine the total number of Negroes on the petit jury venire and we have a right to determine the total number of whites on the petit jury venire.

The Court:

Well, I am perfectly willing for you to determine it. My question is how are you going to determine it here this morning?

Mr. Douglas:

Just to ask each person whether he is white or Negro.

The Court:

You should have done that before. That is up to you to have prepared your case and we are not going to stop now to go around and ask sixty men what race they belong to. That is a matter of preparation. We have not got time to do that now. We will be here all day doing something like that.

Mr. Douglas:

Am I to understand, Your Honor, that the ruling on our request to poll the jury as to race has been denied?

The Court:

Well, I don't know. That is the first time it has ever been made and I do not know how you are going to poll them as to race.

Mr. Roy:

Judge, if I may be heard, on December 2, 1963, evidence was taken on the Motion to Quash the general jury venire and at that time the names of the petit jury for this week had been published in the newspaper and counsel at that time could have if he had so wished had them up here to testify to their race. At this time there is nothing before the court.

The Court:

There is not a thing in the world.

Mr. Roy:

And this court gave the accused or his counsel until November 18, 1963 to file motions which he has done.

The Court:

Call five men.

Mr. Douglas:

I would like to except to the ruling of the Court.

The Court:

I haven't ruled on anything. I haven't got anything before me to rule on. You have asked that we call the jury venire and ask them what race they belong and I am not going to do that.

Mr. Douglas:

I will ask for the record to reflect that counsel for the defendant orally asked the court to poll the jury venire by race. The purpose of the question was to further substantiate the motion challenging the general jury venire, the Grand Jury Venire, the petit jury venire, and also in support of the Motion to set aside the petit jury which has not been filed yet, but which will be filed at the proper time, that is, after the five man jury has been accepted on this case and before they have been sworn in. I would like for the record to reflect that the court took the position that there was nothing before it and refused to rule on the request of counsel. Counsel excepts to the position of the court making the aforestatement all a part of the formal bill of exception.

The Court:

The motion to Quash the petit jury venire is a dilatory motion and at least a preliminary motion which should have been filed within the time allowed and fixed by the court in the outset of this case and which was not filed. The filing of such a motion at this time comes too late, if counsel anticipates filing it. After the selection of the jury if counsel desires to file some motion with respect to the jury selected he may or may not have a right to do that. I can't pass on that until the time comes. We haven't yet selected the jury, the petit jury venire as to race is a matter of preparation for counsel to make preliminary to the trial of the case. Call Five Men.

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided which is done accordingly this day of , 1964.

JUDGE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA NUMBER 47-225

VS.

J. W. DAVIS CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER THIRTEEN

BE IT REMEMBERED, that on Thursday, December 12, 1963, during the voir dire examination the defense used all its peremptory exceptions, and after the five man jury had been selected, but before they had been sworn the following transpired:

TRANSCRIPT PAGES 157-163

THE COURT: All right. Swear the jury, Miss Bres.

MR. DOUGLAS: Excuse me, please, before these jurors are sworn in, Your Honor, I would like to file my motion to set aside the petit jury and serve the District Attorney with a copy and attach these two documents as a part of my motion to set aside the petit jury. One of the documents is the United States Census of Population for 1960 for the State of Louisiana. There is a sub-topic called General Population Characteristics. This is a booklet published by the U. S. Department of Commerce, Bureau of the Census. I am introducing specifically page 20-78 Table No. 27, which is entitled "Age by color and sex for parishes, 1960." I am also attaching as a part of my motion to set aside the petit jury the booklet entitled "U. S. Censuses of Population and Housing for 1960. Census Tracts, Baton Rouge, Louisiana." This is also published by the U. S. Department of Commerce. I am specifically introducing the tables on page 13, 29 and 31.

THE COURT: You say you are filing a motion. What is the motion?

MR. DOUGLAS: The motion to set aside the petit jury, Your Honor.

The Court:

On what grounds?

Mr. Douglas:

On essentially the same grounds as we urged in the motion to set aside the general jury venire, the Grand Jury venire, the petit jury venire.

The Court:

The Motion is overruled mainly because it comes too late. It could have been filed within the time fixed by the Court to file preliminary motions at which time it should have been filed because it is that type of motion. There has nothing transpired since that time that adds to the right to file it as a later date. The fact that the jury now has been selected is no criteria that gives the right to file it now as against the right, the duty to file it within the date fixed by the Court and for the further reason that if this motion is based on the same ground as the motions referred to by counsel the allegations of the motion are incorrect. There is no systematic exclusion or inclusion of Negroes in our jury system. In the last good many years I don't think there has been a jury venire, petit jury venire, on which there haven't been any number of Negroes included. How many are on this venire I don't know at this time, but I will announce that I will determine at some time if the occasion arises for me to write a per curiam or something of that sort I will then be in possession of that information which counsel could have ascertained himself easily and maybe he has, I don't know, but the motion is overruled.

Mr. Douglas:

Well, if Your Honor Please, before I except to the ruling of the Court there was some testimony that we wanted to adduce on the trial of the motion to set aside the petit jury and additionally I have an application for a subpoena duces tecum on the Clerk of Court asking for the total number of whites and the total number of Negroes who were on the general jury venire.

Mr. Roy:

Judge, I would now like to call the Court's attention -- I don't have it here, but I would like the Court to look at RS 15:202 or 203 and I think the law specifically --

The Court:

Well, I tell you that is exactly what I had ruled on. There is no question about that in my mind.

Mr. Douglas:

If your Honor Please, I don't think that we are too late. There has been some question, I know the question has been specifically raised in at least one case decided by the State Supreme Court. Of course, there was an adverse ruling in that case. I think the name of the case was the Labat case and this was with reference to the challenge of the Grand Jury, however, there is another case, I don't recall the name offhand, coming out of Georgia which went up to the U. S. Supreme Court and the holding as I recall it was that this is not the kind of right which a defendant can be found to have waived. The equal protection and due process clause --

The Court:

He hasn't waived it. I don't contend that he has waived it. I contend that time was fixed in which to give him the opportunity to file it and he didn't do it. I assume he didn't want to or counsel didn't want to. Let's go ahead.

Mr. Douglas:

If your Honor Please, I want to perfect my record here. Counsel for the defendant would except to the court's denial of my application for a subpoena duces tecum in support of the motion to set aside the petit jury, which subpoena duces tecum was directed to Perry M. Johnson,, Clerk of Court, and in which subpoena we asked for the total number of Negroes and the total number of whites on the general jury venire from which this petit jury venire was drawn. I would like to make a part of the bill of exception the motion, the ruling of the Court all a of the bill of exception.

Additionally, I would like to reserve the bill of exception to the Court's ruling on our motion to set aside the petit jury making the written motion, the two documents attached to the motion and the ruling of the Court all/of the bill of exception.

Defendant first submitting this his formal bill of exception to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided which is done accordingly this day of , 1964.

JUDGE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. 47-225 STATE OF LOUISIANA FILED:

vs.

J. W. DAVIS

* *

MOTION TO SET ASIDE PETIT JURY

NOW into court through undersigned counsel comes J. W. Davis, defendant, in the above entitled and numbered proceedings, and having heard the Bill of Information read and protesting that he is not guilty of the offense set out in the said Bill of Information now moves to set aside and void the petit jury for the following reasons:

1. Your mover, J. W. Davis is a member of the Negro race and alleges that the jury selection plan in East Baton Rouge Parish has not been impartially administered and has been administered so as to exclude all but a token number of Negroes from the General Jury Venire, the Grand Jury Venire, the Petit Jury Venire and the petit jury herein empaneled, said exclusion being based solely on race.

2. That the net effect of said lack of an impartial administration of the Jury System and systematic exclusion of all but a token number of Negroes from the General Jury Venire, Grand Jury venire and Petit Jury Venire is that there are so few Negroes examined on the voir dire that after the state exercises its premptory exceptions rarely if ever does a Negro serve on any petit jury which actually decides any case.

3. That aforementioned lack of impartial administration of the Jury System and exclusion of all but a token number of qualified Negroes will prevent your mover from getting a fair trial in denial of his constitutional rights guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States of America.

4. That segregation is the express policy of the State of Louisiana. The Louisiana Legislature in 1960 adopted the following preface to a joint resolution concerning the possible integration of any tax supported facility in the state:

> "Whereas, Louisiana has always maintained a policy of segregation of the races, and
>
> "Whereas, it is the intention of the citizens of this sovereign state that such a policy be continued...." Act No. 630 of 1960 to amend Article X of the Louisiana Constitution.

5. That currently many state laws require segregation, see L.S.A.-R.S. 4:5; 4:451; 4:452; 14:79; 15:752; 17:10; 17:443; 17:462; 45:528; 45:529; 45:530; 45:531; 45:532; 45:1301; 45:1303; 23:971; 23:972; 33:5066; 13:917; 33:4558.1 and 14:317.

6. That selection of the Grand Jury Foreman, the Grand Jury, the Petit Jury Venire, the Petit Jury and the General Jury Venire is done under the "aegis" of a state enforced segregated society which prohibits bona fide compliance with the state and federal constitutions. That all selection of the Grand Jury members is done on the basis of reputation and/or acquaintanceship. The vicissitudes of a segregated society with its social, political and economic ostracisms and presures effectively prohibit qualified Negroes from entrance into community circles whierein acquaintanceship and reputation for honesty, character and integrity could be established. Thus those charged with the duty of "selecting" the best qualified without discrimination on the basis of race are ill suited because of the "system of segregation."

7. That it is the positive and affirmative duty of the Jury Commissioners and other persons charged with the selection and administration of the jury system to familiarize themselves fairly with the qualifications of the qualified jurors of the parish without regard to race or color and that the same has not been done in this instance.

8. That the decided variation between the population ratio of whites to Negroes and the ratio of whites to Negroes on the

general jury venire which variation cannot be explained and which variation is long continued furnishes sufficient evidence of a lack of an impartial administration of the jury system and of systematic exclusion of all but a token number of Negroes on the General Jury Venire, Grand Jury Venire, Grand Jury, Petit Jury Venire and on the petit jury.

9. That the District Attorney Sargent Pitcher, Jr., is a charter member of The Louisiana Citizens Council an organization dedicated to the continued subjugation of the Negro by denying him his constitutional rights guaranteed under the constitution of the United States.

10. That J. W. Davis the defendant herein is a militant Civil Rights Leader and was arrested while picketing in Iberville Parish against discriminatory hiring practices of a certain store.

11. That this is the first offense of the defendant, J. W. Davis; that he has made restitution of the sum for which he is now being prosecuted; that but for his integrationist activities he would not be subjected to this trial.

12. That only males are eligible to serve on juries in Louisiana; that one does not have to be a registered voter in order to serve on a jury in Louisiana; that in this parish, East Baton Roube Parish there are 16,824 non-white males over the age of 21; that only the voter registration rolls are used to get names for the general jury venire, grand jury venire, grand and petit juries; that there are approximately 11, 100 Negro voters both male and female in East Baton Rouge Parish; that this procedure of the jury commission of the Parish of East Baton Rouge unconstitutionally excludes a large number of qualified Negroes from serving on juries; that there are 9,506 non-white, owner occupied homes in the Parish of East Baton Rouge; that the median school years completed by non-white in the Parish of East Baton Rouge is 6.9 years; that there are 2,988 non-white families in East Baton Rouge Parish with incomes of $5,000.00 a year or more;

that there are 2,080 non-white persons in East Baton Rouge Parish with 1 or more years of college training; that there are 3,321 non-white males employed in the professional, technical, clerical, sales, crafts and kindred pursuits in the Parish of East Baton Rouge and that all of the above allegations show that there is a substantial number of Negro males who are available to serve on juries and who are qualified to serve on juries but who have been systematically excluded and only a token number included in the general jury venire, grand jury venire, petit jury venire, grand and petit juries of the Parish of East Baton Rouge. See attached U. S. Census of Population 1960 Table 29 and Census Tracts, Baton Rouge, Louisiana Pages 13, 29 and 31.

13. That the use of only the voter registration rolls as a source of names for the general jury venire, grand jury venire, petit jury venire, grand and petit juries is unconstitutional in violation of the equal protection of the laws clause ofthe XIV Amendment to the United States Constitution and to force defendant to go to trial under such circumstances is to deprive him the due process of law guaranteed by the XIV Amendment to the United States Constitution.

14. That the voter registration rolls which are used to get names for the various juries has race designated on it thus affording the jury commissioners the opportunity to discriminate in violation of the equal protection and due process clauses of the XIV Amendment to the United States Constitution.

15. That there are 81,931 white, male and female voters in East Baton Rouge Parish and 11,100 Negro, male and female voters in East Baton Rouge Parish thus this faction alone without more proves that use of the voting rolls alone as a source for jury names invokes a built in unconstitutional activity on the part of the East Baton Rouge Parish Jury Commission.

WHEREFORE, defendant, J. W. Davis prays that this challenge to the petit jury empaneled herein be maintained and that the bill of information against the defendant be held void.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
ATTORNEYS FOR DEFENDANT
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

BY:______________________________

MURPHY W. BELL
971 SOUTH 13TH STREET
BATON ROUGE, LOUISIANA

OF COUNSEL:

CARL RACHLIN
38 PARK ROW
NEW YORK 38, NEW YORK

FLOYD B. McKISSICK
213½ W. MAIN STREET
DURHAM, NORTH CAROLINA

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority personally came and appeared: NILS R. DOUGLAS who after first being duly sworn did depose and say that he is one of the attorneys in the above numbered and entitled cause and that he has read the foregoing motion and that on information and belief all the allegations therein contained are true and correct.

____
NILS R. DOUGLAS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS DAY OF
, 196 .

____
NOTARY PUBLIC

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA

VS. NUMBER 47-225

J. W. DAVIS CRIMINAL DOCKET

* *

AMENDED AND SUPPLEMENTAL APPLICATION FOR SUBPOENA DUCES TECUM

DIRECTED TO PERRY M. JOHNSON, CLERK OF COURT

ON MOTION of MURPHY W. BELL, one of the Attorneys for the accused, J. W. DAVIS, and on suggesting to the Court that additional information is needed we herewith submit our amended and supplemental application for subpoena duces tecum for this to-wit:

1. The revised and supplemental General Venire Lists ordered by the 19th Judicial District Court dating from 1958 to date.
2. The list of Petit Jurors selected to serve in the 19th Judicial District Court for each jury week dating from 1958 to date.
3. The list of Grand Jurors selected to serve in the 19th Judicial District Court dating from 1958 to date, that

the aforementioned enumerated items are in the possession of the Honorable Perry M. Johnson, Clerk of Court for the 19th Judicial District, Parish of East Baton Rouge, State of Louisiana at Baton Rouge, Louisiana; that their production in Court November 26, 1963 at 10:00 A. M. or to any other date to which this cause may be continued, on the trial of the MOTION CHALLENGING THE GENERAL JURY VENIRE, as filed herein, is necessary and material to the interest of your defendant, and that defendant intends to prove by the said records, the following facts, to-wit:

(1) That Negroes have been systematically excluded from the general jury venire in East Baton Rouge Parish, solely because of race and color.

(2) That Negroes have been systematically included on the general jury venire solely because of race and color.

(3) That said systematic exclusions and systematic inclusions of Negroes on general jury venires reduce substantially the number of Negroes placed on said venire, all in violation of your defendant's rights, privileges and immunities as guaranteed by the XIV Amendment to the Constitution of the United States of America.

That further in connection with said records testimony of the official custodian, Honorable Perry M. Johnson and Mrs. Enid A. Cain is necessary to explain and interpret said records, thereby requiring Subpoena ad Testificanda.

WHEREFORE, CONSIDERING THE FOREGOING, IT IS ORDERED BY THE COURT that a SUBPOENA DUCES TECUM do issue herein commanding Honorable Perry M. Johnson and Mrs. Enid A. Cain, Clerk of Court and Dupety Clerk of Court, respectively, of East Baton Rouge Parish to personally appear and produce in open Court on the 26th day of November, 1963, at 10:00 o'clock AM., or on any date to which this cause may be continued, the above records.

Baton Rouge, Louisiana, November , 1963.

JUDGE

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally appeared:

MURPHY W. BELL

one of the attorneys, for the accused in the above entitled and numbered cause, who, after being duly sworn did depose and say that he has read and prepared the foregoing application; that all of the allegations of fact are true and correct, and that this application was not filed for purposes of delay.

MURPHY W. BELL

SWORN TO AND SUBSCRIBED
BEFORE ME THIS DAY
OF NOVEMBER, 1963.

NOTARY PUBLIC

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA

VS. NUMBER 47-225

J. W. DAVIS CRIMINAL DOCKET

* *

AMENDED AND SUPPLEMENTAL APPLICATION FOR SUBPOENA DUCES TECUM DIRECTED TO PERRY M. JOHNSON, CLERK OF COURT

ON MOTION of MURPHY W. BELL, one of the Attorneys for the accused, J. W. DAVIS, and on suggesting to the Court that additional information is needed we herewith submit our amended and supplemental application for subpoena duces tecum for this to-wit:

1. The revised and supplemental General Venire Lists ordered by the 19th Judicial District Court dating from 1958 to date.
2. The list of Petit Jurors selected to serve in the 19th Judicial District Court for each jury week dating from 1958 to date.
3. The list of Grand Jurors selected to serve in the 19th Judicial District Court dating from 1958 to date, that

the aforementioned enumerated items are in the possession of the Honorable Perry M. Johnson, Clerk of Court for the 19th Judicial District, Parish of East Baton Rouge, State of Louisiana at Baton Rouge, Louisiana; that their production in Court November 26, 1963 at 10:00 A. M. or to any other date to which this cause may be continued, on the trial of the MOTION CHALLENGING THE GENERAL JURY VENIRE, as filed herein, is necessary and material to the interest of your defendant, and that defendant intends to prove by the said records, the following facts, to-wit:

(1) That Negroes have been systematically excluded from the general jury venire in East Baton Rouge Parish, solely because of race and color.

(2) That Negroes have been systematically included on the general jury venire solely because of race and color.

(3) That said systematic exclusions and systematic inclusions of Negroes on general jury venires reduce substantially the number of Negroes placed on said venire, all in violation of your defendant's rights, privileges and immunities as guaranteed by the XIV Amendment to the Constitution of the United States of America.

That further in connection with said records testimony of the official custodian, Honorable Perry M. Johnson and Mrs. Enid A. Cain is necessary to explain and interpret said records, thereby requiring Subpoena ad Testificanda.

WHEREFORE, CONSIDERING THE FOREGOING, IT IS ORDERED BY THE COURT that a SUBPOENA DUCES TECUM do issue herein commanding Honorable Perry M. Johnson and Mrs. Enid A. Cain, Clerk of Court and Dupety Clerk of Court, respectively, of East Baton Rouge Parish to personally appear and produce in open Court on the 26th day of November, 1963, at 10:00 o'clock AM., or on any date to which this cause may be continued, the above records.

Baton Rouge, Louisiana, November , 1963.

JUDGE

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally appeared:

MURPHY W. BELL

one of the attorneys, for the accused in the above entitled and numbered cause, who, after being duly sworn did depose and say that he has read and prepared the foregoing application; that all of the allegations of fact are true and correct, and that this application was not filed for purposes of delay.

MURPHY W. BELL

SWORN TO AND SUBSCRIBED
BEFORE ME THIS DAY
OF NOVEMBER, 1963.

NOTARY PUBLIC

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA NO. 47-225

VS

J. W. DAVIS CRIMINAL DOCKET

* * * * * * * * * * * * * *

BILL OF EXCEPTION NUMBER FOURTEEN

Be it remembered that the special motions filed on behalf of the defendant herein were tried on Monday, December 2, 1963 at which time the defendant, J. W. Davis, took the stand in his own behalf. On Thursday, December 12, 1963, the trial on the merits was had before a five man jury, during which trial your defendant did not take the stand. During the trial the State called as its witness Thomas Frank Carpenter, the party to whom defendant, J. W. Davis, had given the check. The following transpired:

TRANSCRIPT PAGES 182-190

Q. Mr. Carpenter, were you in court --

MR. DOUGLAS: I object, Your Honor.

MR. ROY: Well, I will recall him then.

MR. DOUGLAS: I still object because the question -- I am anticipating that he is going to ask the witness something that transpired in the court-- in this court --

MR. ROY: That's right.

MR. DOUGLAS: -- with reference to some prior proceeding and this is not before the Jury and has nothing to do with it whatsoever.

MR. ROY: Judge, if you will permit me to ask the question I think Your Honor will be in better position to pass on the objection.

THE COURT: I can't pass on it, I haven't heard it.

MR. DOUGLAS: Will Your Honor instruct the witness not to answer the question?

THE COURT: Yes, don't answer the question.

Q. Mr. Carpenter, were you in court previously on this case specifically on December 2nd of this year?

MR. DOUGLAS: Don't answer the question.

Q. Were you in court on this case before today?

MR. DOUGLAS: Don't answer the question.

THE COURT: I have instructed him not to answer the question. Now, what do you want to do?

MR. DOUGLAS: I want to object, Your Honor, because what happened previously on the preliminary motions involved in this case was directed solely at questions of law. It had nothing to do with the merits and any question as to anything which transpired at any time other than the events immediately surrounding --

THE COURT: Well, if you insist on your question the Jury will have to be retired. I will have to know what the purpose is before I can rule on it.

MR. ROY: All right.

THE COURT: Retire the Jury, Mr. Sheriff.

(JURY RETIRED)

MR. ROY: Judge, the object of my question is simply this, that as Your Honor will recall some time ago we had a hearing on the motions and we took evidence, that is, the mover put on evidence. Among the witnesses was the defendant and with reference to this return receipt he specifically made a public judicial declaration in court that he had received a letter and signed for this thing and that's what I want to ask this witness, if he was in court when he testified, did he recall or what, if anything, did he say with reference to this return receipt. He testified at the hearing that he himself -- and if this witness doesn't do it I am going to testify to the Court if the Court will permit me but I would prefer not to get involved as a witness, but this accused got up on the stand on the motion for change of venue objecting to the --

MR. DOUGLAS: That was not it.

MR. ROY: I don't remember what it was, but he testified in court and Your Honor knows that he denies receiving the D.A.'s letter, but he admitted receiving this letter and signing for this registered letter. That's what I want to prove, that he made a judicial declaration and admission of fact that he received this registered letter.

MR. DOUGLAS: But this is not before the Jury.

MR. ROY: It is before the Jury, they are going to argue that this -- that I haven't proved this signature. I haven't and that is the purpose of the question.

MR. DOUGLAS: If Your Honor Please, the proceedings prior to today with reference to the defendant here were directed towards questions of law. Our position, the position of the defense is that the evidence adduced on the motions is not before the Jury today. The Jury has to decide on the basis of what Mr. Roy can adduce before them today and if he can't prove up his case then it is for the Jury to decide.

MR. ROY: None of my evidence was adduced today. All of my evidence goes way back. Of course, Your Honor, we are talking about nothing because I just remember that we had a sequestration of witnesses and I know he wasn't sitting in here on the day he took the stand, that Davis took the stand, so I will just withdraw the question because he was out in the hall.

Well, Judge, I might say this while we have got the Jury out. I also want to be sworn and testify that he took the stand and that he admitted that he signed that.

THE COURT: Well, of course, you can cross the bridge when you get to it. You want to do it now, you mean?

MR. ROY: Yes, sir, I am going to do it. I would like to do it now. The Jury is out and objection is being made to that sort of testimony.

THE COURT: Bring in the Jury, Mr. Sheriff.

MR. DOUGLAS: We are going to object, Your Honor, to testimony by the District Attorney.

MR. ROY: Judge, if it wouldn't be so hard to find it I would ask Miss Bres to get it because she has it in the record.

THE COURT: I don't know of any legal prohibition against the District Attorney making a statement.

MR. ROY: It is a judicial declaration, Judge.

THE COURT: I don't know of any prohibition.

MR. DOUGLAS: This is testimony, Your Honor, and I think that the State ought to be bound by the same rules of evidence that the defense has been bound by. On the prior hearing we didn't have certain records here to file and we were not permitted to have them introduced. Counsel is talking about a judicial declaration. Either he presents the Judicial declaration or he can't testify to it.

MR. ROY: Well, I will be happy to do that, Judge. It is in the record. I will be willing to stand by the record.

THE COURT: That objection may have some merit.

MR. ROY: I think that is the best evidence, what he said, and I am willing to go on that.

THE COURT: All right, and then you can make your offering, with the transcript to be produced because you can't do it here this morning, I mean you can't produce it.

MR. ROY: Judge, I will have to get it in before we finish the trial.

THE FOLLOWING TRANSPIRED AT PAGES 197-199 OF THE TRANSCRIPT:

MR. ROY: Judge, the State would like to offer into evidence that part of the record or that excerpt of the transcript, the record rather, it is on record, I understand and has not been transcribed yet, of what I told Your Honor I wanted to offer. I don't want to mention it while the Jury is here but I would like to offer that and then I am going to rest.

MR. DOUGLAS: I object, Your Honor. We can't just have a blanket offer of evidence --

THE COURT: You can make an offering with the right reserved to furnish the original transcript during the trial. I mean you can do that with a reservation. I don't see why that would be objectionable.

MR. DOUGLAS: He can't make an offer of evidence by reference to something that was said previously.

MR. ROY: Judge, I want to offer it. What I would like to do is take our noon recess now and when Miss Bres finds it play it to the Jury or just any way she could transcribe it, it would be just one question and one answer, is all I am interested in, with reference to the matter of which I spoke when the Jury was out.

THE COURT: Well, if she can write it during the noon hour and there is objection to it now, I don't see any point in forcing a termination of the issue on that objection until it is tually offered and do you have any other evidence?

MR. ROY: No, sir, that is all. After that I will be in a position to rest after that excerpt is produced.

THE COURT: All right in order to give the clerk an opportunity to transcribe it we will recess now for the noon hour and would 1:30 give you time, Miss Bres?

REPORTER: Yes, sir.

THE COURT: All right, Court will reconvene at 1:30.

AND THE FOLLOWING TRANSPIRED AT PAGES 200-205 OF THE TRANSCRIPT:

1:30 p.m. - the trial of this case was resumed.

(JURY IN, POLLING WAIVED)

MR. ROY: If the Court Please, at this time I would like to offer marked State-7 this particular exhibit which contains a certified extract of the testimony of this defendant on a previous hearing with reference to a matter of relevancy in this case.

MR. BELL: If it Please the Court, we would like to offer our objection to any introduction of any previous testimony that has been adduced in this case on the grounds that the matter on which this testimony was taken was on a question of law and at the time the State did not apprise the defendant of any particular -- of his constitutional rights that he is not required to testify against himself. He is not even required to take the stand and at this time we want to object to the introduction of this exhibit by the State for those reasons and for the additional reason that because of the Fifth Amendment of the Federal Constitution he cannot be made to testify against himself.

THE COURT: Let me see the document.

(Court examined document)

MR. ROY: Judge, I might add that the man voluntarily took the stand. Anybody is capable of waiving that right and he voluntarily took the stand.

THE COURT: I think you have got a lot of stuff in there that is not necessary.

MR. ROY: Yes, Your Honor, I think there is a lot in there that is beneficial to the defendant.

THE COURT: That would not make any difference who it is beneficial to. The only question before the Court is with respect to the receipt of the letter.

(Court made further examination of the document)

That's the only part that is admissible, that is the only part I will let in. If you want to read what I have circled there and cut it down to that then I will pass on that. I will have to sustain the objection in its present form.

MR. BELL: If the Court Please, we are going to object to--

THE COURT: Well, there is nothing offered but what is offered there and you have objected to it so I sustain the objection to that exhibit. If you want to revise it and present it at another time I will pass on it then again.

MR. ROY: Judge, I would like to offer in evidence as a judicial declaration and admission of fact by this accused on the previous occasion the excerpts contained in the language that Your Honor just marked.

THE COURT: You will have to take it out of there and draw it up as an excerpt.

MR. DOUGLAS: If your Honor Please, I am going to move for a mistrial because there is some discussion going on relative to some prior testimony of which the only reasonable conclusion is that --

THE COURT: There has been nothing said that would prejudice the Jury and I will instruct the Jury to disregard anything that has been said. There has nothing been said.

MR. DOUGLAS: I wanted to get Your Honor to rule on my motion for a mistrial.

THE COURT: The motion is overruled.

MR. DOUGLAS: Counsel for the defendant excepts to the ruling of the Court and makes a formal bill of exception the conversation immediately preceding the taking of the bill of exception immediately preceding the motion for a mistrial, the ruling of the Court all a part of the bill of exception.

MR. ROY: I will withdraw this thing and I rest, Your Honor.

STATE RESTS

. . . . . .

MR. BELL: Defense rests, Your Honor.

DEFENSE RESTS

. . . .

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided which is done accordingly this_____________day of ___________________ 1964.

____
JUDGE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA NO: 47-225

VS

J. W. DAVIS CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER FIFTEEN

BE IT REMEMBERED THAT, before entering on the trial of this case your defendant, having heard the information read and protesting that he is not guilty of the offense set out therein filed a Motion Challenging General Jury Venire. That on Monday, December 2, 1963 a hearing was had contradictorily with the State during which the following transpired:

TRANSCRIPT PAGES 89-94:

Q Mr. Johnson, we asked in the subpoena duces tecum for the revised and supplemental general venire list ordered by the Nineteenth Judicial District Court dating from 1958 to date and also the list of petit jurors selected to serve in the Nineteenth Judicial District for each jury week dating from 1958 to date and for the list of Grand Jurors selected to serve in the Nineteenth Judicial District Court dating from 1958 to date.

THE COURT: Where is that? I haven't seen it. Who signed it?

MR. ROY: I don't think it has been signed, Judge.

MR. BELL: I don't think it has been signed, Your Honor. We discussed that with you and --

THE COURT: Yes, you wanted me to sign it, but I would not sign it.

MR. BELL: That's right, you did not sign it so we filed it with the Clerk of Court.

THE COURT: Well, then you don't have to respond to it.

MR. BELL: In that case, Your Honor, we would like -- I mean he is not required to respond but could he respond on his own will? Without the Court order, that is what we are trying to get at.

THE COURT: Well, it all depends on what would be the volume of stuff you are bringing in here and you want all the registration lists, which would fill half of this room and I am not going to require that. Now, I don't know what the volume of material is that Mr. Johnson has brought. The order wasn't signed and he wasn't served, but if you have some if it is pertinent -- I don't know whether it is or not, but what is the volume of stuff you have?

MR. BELL: Well, if the Court Please, we will attempt to limit the amount of evidence that we expect to produce to a reasonable amount.

BY THE COURT:

Q What is it you have?

A I have only -- the Court order said -- the original Court order said 1960.

Q There is no Court order here for 1960.

A I got that from 1960.

Q Are you ready to comply with it?

A Yes, sir.

Q All right, go ahead from there.

A Not 1958. 1958 wasn't signed.

MR. BELL: In respect to the Court's ruling in not signing the amended and supplemental application for the writ of subpoena duces tecum directed to Perry M. Johnson, Clerk of Court, in this case which application was filed on November 27,1963, at approximately 3:45 in the Clerk of Court's office we would like to except to the Court's ruling not --

THE COURT: Well, the ruling was made, counsellor, in my office some days ago, it is not made here today.

MR. BELL: If Your Honor Please, the question of the order was presented to -- is again presented to the Court at this time.

THE COURT: You didn't present anything to me.

MR. BELL: Well, in that case, Your Honor, I do so present the original of this particular amended and supplemental application and ask and request that the Court order Mr. Johnson to produce the evidence, the books that are set out in the application.

THE COURT: Well, I will take it under advisement. Go ahead. Interrogate your witness.

MR. BELL: We would like in that respect, Your Honor, in order to protect ourselves on the record we also would like to except to the Court's ruling taking this application under advisement because this information is needed now and we would like to make a part of the bill of exception the application as filed with the Clerk on November 27th, together with the ruling of the Court and the testimony whatever it is, that has already been adduced.

THE COURT: I might supplement what I said up to now that I explained to counsel at the time that it is my position that it would make not difference what the policy was with respect to the selecting of the general jury venire prior to January 1961 because we have an entirely new Jury Commission starting with this term of the Judges' office which started about the first part of December with the exception of one or two holdovers. I think maybe Mr. Mayer is the only -- and Mr. Johnson the only holdovers. I do not wish to infer at all that there has ever been any discretion or discrimination shown against including Negroes in the juries and the venires, but regardless of the policy of the Jury Commission, if it had any such policy, which I don't think it did, prior to 1961, January of 1961, this present Jury Commission and the present system would not be controlled by what they did up until the time of the appointing of the present Jury Commission and that is all that is now before us. Go ahead.

BE IT FURTHER REMEMBERED THAT, after the Court denied the plea to the jurisdiction of the Court, the following transpired:

TRANSCRIPT PAGES 140-141

MR. DOUGLAS: If your Honor Please, before I except to the motion to quash the general jury venire have you ruled on the supplemental motion to the Clerk of Court?

THE COURT: No more than I did when you brought it to me to sign. I ruled on it at that time in my office and I have not done anything about it since and don't intend to.

MR. DOUGLAS: I would, like the record to show that counsel for the defendant excepts to the ruling of the Court on the motion to set aside the general jury venire and would like to make as a part of the exception the written motion, the original subpoena duces tecum on the Clerk of Court, the supplemental duces tecum to the Clerk of Court, the testimony of all the witnesses and all the documents introduced into evidence and the ruling of the Court all a part of the bill of exception.

. . . .

The amended and supplemental application for Subpoena Duces Tecum Directed to Perry M. Johnson, Clerk of Court is attached hereto and made a part hereof as if copied in extenso.

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided which is done accordingly this _____________ day of _______________________ 1964.

____

JUDGE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA	NO. 47-225
vs	
J. W. DAVIS	CRIMINAL DOCKET

* *

BILL OF EXCEPTION NUMBER SIXTEEN

BE IT REMEMBERED, that the defendant herein was tried and convicted and that after verdict but before sentence d fendant filed a motion for a new trial which was denied. Defendant timely excepted to the ruling of the Court reserving a formal bill of exceptions thereto. Defendant now perfects this his formal bill of exception and attaches hereto and makes a part hereof as fully as if copied in extenso the Motion for a New Trial.

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided which is done accordingly this ____________ day of ________________________ 1964.

____
JUDGE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. 47-225 STATE OF LOUISIANA CRIMINAL DOCKET

VS.

FILED:_________ J. W. DAVIS DPY. CLK:_______

* *

MOTION CHALLENGING GENERAL JURY VENIRE

Now into court through undersigned counsel comes J. W. DAVIS, reserving his right to file other pleadings herein and having heard the bill of information against him and protesting that he is not guilty, suggests that he has been charged with violation of LSA-R.S. 14:71 which requires a trial by a 5 man jury and now moves the Court to set aside the general jury venire from which this 5 man jury is to be drawn for the following reasons:

1. The accused J. W. Davis is a member of the Negro race and a citizen of the State of Louisiana and of the United States of America. The accused alleges that he will not be able to obtain a fair trial as guaranteed by the VI and XIV Amendments to the Constitution of the United States because of the great and irreparable wrong being effected in the selection of the General Jury Venire, in that plan of selection has not been impartially administered and has been administered so as to exclude all but a token number of Negroes from the General Jury Venire, said exclusion being based solely on race.
2. That the net effect of said lack of an impartial administration of the General Jury Venire is that there are so few Negroes examined on Voir dire that after the State exercises its peremptorius exceptions a Negro never serves on any petit jury which actually decides a case.
3. That segregation is the express policy of the State of Louisiana.

4. That currently many state laws require segregation. See L.S.A.-R.S. 4:5; 4:451; 4:452; 14:79; 15:752; 17:10; 17:443; 17:462; 45:528; 45:529; 45:530: 45:531; 45:532; 45:1301; 45:1303; 23:971; 23:972; 33:5066; 13:917; 33:4558.1 and 14:317.

5. That the selection of the general jury venire is done under the aegis of a state enforced segregated society which prohibits bona fide compliance with the State and Federal Constitutions. That all selection of members of the General Jury Venire is done on the basis of reputation and/or acquaintanceship. That the vicissitudes of a segregated society with its social, political and economic ostracisms and pressures effectively prohibit qualified Negroes from entrance into community circles wherein acquaintanceship and reputation for honesty, character and intergrity could be established. Thus those charged with the duty of selecting the best qualified without discriminating on the basis of race are ill suited because of the system of segregation.

6. That it is the routine and affirmative duty of the persons charged with the selection and administration of the General Jury Venire to familiarize themselves fairly with the qualifications of persons eligible for the general jury venire without regard to race or color and that the same has not been done in this instance.

7. That the decided variation between the population ratio of whites to Negroes and the ratio of whites to Negroes on the General Jury Venire which variation cannot be explained and which variation is long continued furnishes sufficient evidence of a lack of an impartial administration of the General Jury Venire and of systematic exclusion of all but a token number of Negroes on the General Jury Venire.

8. That all of the aforementioned allegations constitute a great wrong and irreparable injury to your defendant in violation of his rights under the due process, equal protection and privileges and immunities clause of the Fourteenth Amendment

to the Constitution of the United States.

WHEREFORE, mover prays that this challenge to the General Jury Venire to be maintained after due proof and that the defendant herein not be tried until such time as he is tried by a jury selected from a general jury venire made up on a fair basis and in accordance with law.

BY ATTORNEYS:

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY:______________________________

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared: MURPHY W. BELL
who, after first being duly sworn did depose and say that he is one of the attorneys in the above matter and that he prepared the above and foregoing motion and that all the facts and allegations therein contained are true and correct to the best of his knowledge, information and belief.

____
MURPHY W. BELL

SWORN TO AND SUBSCRIBED
BEFORE ME, THIS DAY
OF SEPTEMBER, 1963.

____
NOTARY PUBLIC

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA	NO. 47-225
VS	
J. W. DAVIS	CRIMINAL DOCKET

* *

MOTION FOR A NEW TRIAL

Now into court through undersigned counsel comes J. W. Davis, the defendant in the above entitled and numbered cause and moves the Court that the verdict rendered herein be set aside and a new trial ordered, for the following reasons:

1) The verdict is contrary to the law and the evidence.

2) The following bills of exception reserved during the entire proceedings show error to the prejudice of the accused:

A. The refusal of the court to sustain:

1. Bill of exception number one wherein the following question was asked Mr. Peyton Parker, "Have you ever seen a criminal case involving a petit jury in which a Negro sat on a jury which sat in judgment?"
2. Bill of exception number two wherein the Court refused to permit defendant to pursue a line of questions involving the procedure used to set up the Grand Jury Venire and the Grand Jury.
3. Bill of exception number three wherein the following question was asked of Mr. Sideny Lacy, an East Baton Rouge Parish Jury Commissioner, "Is it not a fact, Mr. Lacy, that for the last six or seven Grand Juries there has been only one Negro placed on this Grand Jury?"

4. Bill of exception number four wherein the following question was asked of Mr. Sidney Lacy, a member of the Jury Commission of East Baton Rouge Parish, "Mr. Lacy, do you believe that Negroes are any less qualified to serve as jurors than white persons?"

5. Bill of exception number five wherein the following question was asked of Mr. Sidney Lacy, an East Baton Rouge Parish Jury Commissioner, "Are you in sympathy with any segregationist groups?"

6. Bill of exception number six wherein the following question was asked of Mr. Carl V. Dawson, an East Baton Rouge Parish Commissioner, "... Are you in sympathy with any segregationsit groups?"

7. Bill of exception number seven wherein the following question was asked to Mr. W. A. Cooper, an East Baton Rouge Parish Jury Commissioner, "Are you a member of any group sympathetic to segregation?"

8. Bill of exception number eight wherein the following question was asked to Mr. Perry M. Johnson, Clerk of Court for the Nineteenth Judicial District and ex-officio chairman of the East Baton Rouge Parish Jury Commission, "Mr. Johnson, are you in sympathy with any segregationist groups?"

9. Bill of exception number nine wherein the court denied defendant's Motion challenging the General Jury Venire.

10. Bill of exception number ten wherein the Court denied defendant's Motion to Quash.

11. Bill of exception number eleven wherein the Court denied defendant's exception to the jurisdiction of the Court.

12. Bill of exception number twelve wherein the Court denied defendant the right to poll the members of the petit jury venire as to race.

13. Bill of exception number thirteen wherein after the defense has used all its peremptory challenges and after the five man jury had been selected, but before they were sworn in the Court denied defendant the right to file a motion challenging the composition of the petit jury.

14. Bill of exception number fourteen wherein the State on three separate occasions attempted to introduce, on the trial proper and in the presence of the Jury, a statement which the defendant is alleged to have made during the trial of the preliminary and special motions.

15. Bill of exception number fifteen wherein the Court refused to order the production of certain documents requested by defendant in an amended and supplemental Application For Subpoena Duces Tecum Directed to Perry M. Johnson, Clerk of Court.

WHEREFORE, your mover prays that a rule nisi issue out of This Honorable Court directed to the District Attorney ordering him to show cause, if any he has, why the New Trial should not be granted in these proceedings.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

MURPHY W. BELL
917 SOUTH 13TH STREET
BATON ROUGE, LOUISIANA

BY: ____________________________

Mss
546 SEDFRE

Louisiana vs. Moore, Ronnie M., March-April, 1962
(Disturbing The Peace and Trespass)

Box 39
Folder 3

State Historical Society of Wisconsin

Please Retain Original Order

Disturbing the peace
Filed 4/5/62
motion denied

STATE OF LOUISIANA PARISH OF EAST BATON ROUGE
NENETEENTH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA
versus
RONNIE M. MOORE

NUMBER: 42-603

****

MOTION TO QUASH

TO THE HONORABLE THE JUDGES OF THE CRIMINAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

And now into Court through undersigned counsel, comes Ronnie M. Moore, accused herein and reserving all other rights to subsequently plead and/or to attack the sufficiency of the bill of information herein filed against him and further protesting that he is not guilty of the offense set out therein, says that said bill should be quashed and mover discharged for the following reasons to wit:

1) The premises described in said bill of information are the public property of the State of Louisiana and not of another and thus said bill is defective in that it does not set forth a crime or an act described as criminal by the Statute cited therein, to wit LSA, RS Title 14 Section 103.1 A (4) (1950 as amended)
2) The premises described in the Bill of information are the public property of the State of Louisiana and by definition are open to the public and said act 69 of 1960, described above as written, deprives mover, as a member of the public, of the equal protection of the Laws and of his privileges and immunities under the Laws of the State of Louisiana, all in violation of Article XIV of the Constitution of the United States.
3) The premises described in the bill of information are the public property of the State of Louisiana and by definition are open to the public, and said Act 69 of 1960 described above and as set forth in the bill of

information filed herein is unconstitutional as constructed and as sought to be enforced, inasmuch as it deprives mover as a member of the public of the equal protection of the Laws and of his privileges and immunities under the Laws all in violation of Article XIV of The Constitution of the United States.

4) The statute cited and the bill of information herein filed set forth no description of criminal acts per se and fail to set a standard whereby an act may be deemed criminal.

5) The bill of information and the statute cited therein are defective and struck with constitutional disabilities because as drafted and applied they abridge movers constitutional rights and liberties under Art. I of the United States Constitution to peaceably assemble and/or to speak.

6) The bill of information and the statute cited therein are defective and struck with constitutional disabilities because they purport to unlawfully delegate powers inherintly legislative to officers of the executive and/or to the owners of premises or to the public at large; such unlawful delegation of unlimited discretion over the public and your mover being without ascertainable standards, limits, or scope, all of which deprives your mover of his rights under the state and Federal Constitutions, the laws of the United States and of the state of Louisiana and particularly those granted him under Articles I, V and XIV of the Federal Constitution, without due process of law.

WHEREFORE mover prays that this motion to quash be deemed good and sufficient and that this prosecution be dismissed and the defendant herein be discharged without date.

Robert F. Collins
Nils R. Douglas
Lois E. Elie
2211 Dryades Street
New Orleans 13, Louisiana

Attorneys for Mover

OF COUNSEL:

Murphy Bell
971 South 13th Street
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Benjamin E. Smith
406 Civic Center Building
New Orleans, Louisiana

Disturbing the Peace Case

Court Refuses this application

NINETEENTH JUDICIAL-DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

STATE OF LOUISIANA	NUMBER 42-603
VS.	
RONNIE M. MOORE	CRIMINAL DOCKET

* *

TO THE HONORABLE THE JUDGES OF THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA:

NOW into court, through undersigned counsel comes RONNIE M. MOORE, made defendant in the above entitled and numbered cause, and by leave of court withdraws his former plea of not guilty for the purpose of this application pleads that he is unable to properly defend himself until he is furnished a Bill Of Particulars upon the following, to-wit:

1.

Who was the duly authorized personnel of Southern University who allegedly requested him to leave the campus of Southern University?

2.

When did this person request him to leave?

3.

What was the month, day and hour by which he was supposed to have left the campus?

4.

Was the request to leave written, or oral?

WHEREFORE, defendant prays this application for Bill Of Particulars be filed and the Honorable Sargent Pitcher Jr., District Attorney be ordered to show cause immediately why the Bill Of Particulars should not be granted.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

2211 Dryades Street
New Orleans, Louisiana

MURPHY BELL
971 S. 13th Street
Baton Rouge, Louisiana

OF COUNSEL
CARL RACHLIN, ESQ.
280 Broadway
New York, New York

BENJAMIN E. SMITH, ESQ.
Civic Center Bldg. N. O. La.

ORDER

THE foregoing application for Bill Of Particulars considered; it is ordered that the Honorable Sargent Pitcher Jr., District Attorney show cause immediately why he should not furnish accused with the Particulars as requested herein.

Baton Rouge, Louisiana, April ____, 1962.

JUDGE

AFFIDAVIT

State of Louisiana

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared:

RONNIE M. MOORE

who being duly sworn, did depose and say that all of the facts and allegations contained in the above and foregoing Motion are true and correct.

RONNIE M. MOORE

SWORN TO AND SUBSCRIBED
BEFORE ME THIS____DAY OF
APRIL, 1962.

NOTARY PUBLIC

not filed on
4/11/62
Disturbing
The
Peace
Case.

STATE OF LOUISIANA PARISH OF EAST BATON ROUGE

NINETEENTH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA

VS.

RONNIE M. MOORE

NO. 42-603 CRIMINAL DOCKET

* *

MOTION TO FIX A TRIAL DATE

ON motion of RONNIE M. MOORE, defendant in the above entitled and numbered cause and upon suggesting to this Honorable Court that a continuance without date was granted in the above case on April 10th 1962 because certain witnesses namely officials at Southern University were out of town on speaking engagements in Texas and further suggesting to the court that defendants were ready to go to trial without appearance of said witnesses the court of its own motion granted a continuance to which counsel for defendants objected and reserved a Bill Of Exceptions. Defendant further suggests that under Article 1 Section 9 of the Constitution of the State of Louisiana 1921 defendant has a right to a speedy and public trial. Defendant further suggests to the court that under the provisions of L.S.A.-R.S. 15:324 no continuance shall be indefinite, but the judge shall in granting the continuance, fix the date upon which the trial shall be proceeded with, if practicable.

OF COUNSEL:
CARL RACHLIN, ESQ.
280 Broadway
New York, New York

BENJAMIN E. SMITH
Civic Center Bldg.
New Orleans, Louisiana

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans, Louisiana

BY________________________

MURPHY BELL
971 S. 13th Street
Baton Rouge, Louisiana

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally came and appeared:
RONNIE M. MOORE
who being duly sworn did depose and say that all of the facts and allegations contained in the above and foregoing motion are true and correct.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS DAY OF
APRIL, 1962.

____
RONNIE M. MOORE

____
NOTARY PUBLIC

ORDER

IT IS ORDERED by the Court that the Honorable Sargent Pitcher, Jr., show cause on the ______ DAY OF ________________, 1962, why this matter should not be set for trial on a date certain.

Signed the _____day of ____________, 1962.

Baton Rouge, Louisiana

____
JUDGE.

Sound Truck case
Motion to desegregate
The Court Room.
Sound Truck
case.

STATE OF LOUISIANA PARISH OF EAST BATON ROUGE

NINETEENTH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA

VS.

RONNIE M. MOORE

NUMBER 42-603 CRIMINAL DOCKET

* *

TO THE HONORABLE THE JUDGES OF THE CRIMINAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

AND NOW into Court through undersigned counsel, comes RONNIE M. MOORE, accused herein and with all due respect to the court and after mature consideration as to the seriousness of this charge and a consideration of the relatedness and interdependence of all of the charges now pending against him in the Parish of East Baton Rouge and after a thorough examination and analysis of the segregation laws of the State of Louisiana which reveals that while there are State Laws requiring segregation in Athletic Events, Entertainment, Social Functions, School, Waiting Room Facilities, Eating and Drinking Facilities for employees, labeling of blood (in hospitals) by races, racial disegration of political candidates for office, and in public parks, recreation centers and playgrounds, there are no State Statutes requiring segregation in court houses or courtrooms. Your mover now avers that there is existing now and has existed for many, many years in the past segregation in the East Baton Rouge Parish Courthouse and in the Court Room in which this trial is being held. Your mover respectfully suggests that in accordance with the holding of the case of Seniors V. Arnold 1960 284 F 2d 106 it is incumbent upon him to call this fact to the attention of the presiding judge. Your mover herewith calls aforementioned fact to the attention of this Honorable Court. Your mover further suggests to this Honorable Court that he cannot obtain a fair trial in a courtroom in which there is judicially sanctioned racial segregation and that to so do would be a denial of his rights under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, your mover prays that this Honorable Court Order that any spectator may sit in any of the seats provided for spectators and that all of the officials of this court be prohibited from directing any person to a particular seat or section by reason of his race and that there is no specific section of the spectator seats reserved specifically for Negroes.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

2211 Dryades Street
New Orleans, Louisiana

MURPHY BELL
971 S. 13th Street
Baton Rouge, Louisiana

OF COUNSEL

CARL RACHLIN, ESQ.
280 Broadway
New York, New York

BENJAMIN E. SMITH
Civic Center Bldg.
New Orleans, Louisiana

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

Before me, the undersigned authority, personally came and appeared:

RONNIE M. MOORE

who being duly sworn, did depose and say that all of the facts and allegations contained in the above and foregoing Motion are true and correct.

RONNIE M. MOORE

SWORN TO AND SUBSCRIBED
BEFORE ME THIS ___ DAY OF
APRIL, 1962.

NOTARY PUBLIC

ORDER

IT IS ORDERED that any spectator may sit in any of the seats provided for spectators and it is further ordered that none of the Officials of this Court may direct any person to a particular seat or section by reason of his race and further ordered that there is no specific section of the spectator seats reserved specifically for Negroes.

East Baton Rouge, Louisiana

This_____day of _____________, 1962.

____

JUDGE

memo on
desegregation
of Court
rooms
filed
in
Sound
Truck
case

STATE OF LOUISIANA PARISH OF EAST BATON ROUGE

NINETEENTH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA

VS.

RONNIE M. MOORE

NUMBER 42-603 CRIMINAL DOCKET

* *

MEMORANDUM

TO THE HONORABLE THE JUDGES OF THE CRIMINAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE STATE OF LOUISIANA:

The Fourteenth Amendment to the Constitution of the United States reads in part:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In Brown V. Board of Education 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), the Supreme Court, of course, held that in the area of public education the "separate but equal" doctrine of Plessy V. Ferguson, 163 U. S. 537 (1896), had no place. The unconstitutionality of compulsory racial segregation in public school facilites has been deemed applicable to racial barriers in other governmental facilities. 2 Emerson & Haber, Political and Civil Rights in the United States 1419-1422 (2d ed. 1958). The rule of Brown was applied to restaurants in public buildings in Plummer v. Cafe I Race Rel. L. Rep. 532 (S.D. Tex. 1955), 240 F 2d 922, 2 Race Rel. L. Rep. 117 (5th Cir. 1956). Negroes in Harris County, Texas, brought on action in federal district court seeking to restrain county officials and the lessee of a restaurant operated in the country court house from denying service in the restaurant to Negroes. County Officials defended on the ground that the restaurant was leased to a private individual for operation and that the lessee could legally restrict his service to whomever he chose. The district court held that the county, having under taken to furnish eating facilities, must afford substantially equal facilities for all persons regardless of race or color, pursuant to the equal protection clause of the fourteenth amendment.

The lessees' operation of the restaurant was governmental action, and the lessee had a similar duty not to exclude Negroes from the restaurant solely on the basis of of race or color. On appeal the Court of Appeals Fifth Circuit, affirmed. Many cases have applied similar principles to other governmental facilities.

Very little needs to be said about Shelly v. Kraemer 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 (1947). This case said at 334 U.S. 13:

> Since the decision of this court in the Civil Rights Cases... the principle has become firmly embedded in our Constitutional Law that the action inhibited by the first section of the Fourteenth Amendment is only such as may fairly be said to be that of the states.

Certainly any segregation existing in a court of law may fairly be said to be such State Action as to invoke the guarantees of the federal constitution.

FRI MAR 16 1962

NEW YORK, N.Y.
POST

Louisiana Lunacy

One has to search the repressive codes of the most loathsome Communist and Fascist tyrannies to match Louisiana's latest device for trying to curb the integrationist movement. This is to charge active advocates of civil rights who run afoul of the law with "criminal anarchy." Conviction under this charge means a 10-30 year sentence on the chain gang.

The "criminals" thus far so charged are three boys, the oldest 22. Two of them committed the heinous offence of attempting to deliver integration literature to a young Negro jailed for his part in a student anti-segregation boycott. The third, a student leader of CORE, was arrested for trespassing and disturbing the peace during an integration demonstration.

It is incredible that these boys should be in danger of chain gang penalties for actions most civilized men applaud.

This sadistic folly requires the urgent attention of Attorney General Robert F. Kennedy. Someone in authority should talk sense to these people before they further sully and degrade America's name.

NEW YORK POST, WEDNESDAY, MARCH 21, 1962

The Trial

MURRAY KEMPTON

Ronnie Moore, of New Orleans, and Weldon Rogeau, of Lake Charles, are out of prison again. It is one of their rare intervals of freedom since last Dec. 11, when the Supreme Court of the U. S. upheld the right of Congress of Racial Equality pickets to protest the segregation of lunch counters in Baton Rouge, La.

"That decision meant nothing to Baton Rouge," Ronnie says. "But to us it is historical."

Maybe 50 students of Southern University went downtown Dec. 13 to test Baton Rouge's respect for the Supreme Court decision. On the second day, 23 of them were arrested; and, on Dec. 15, Ronnie Moore led 2,500 others back downtown to protest.

The Baton Rouge police broke them up with tear gas and German shepherds, seizing their cars and buses and sending all but 50 of them to walk back to the college infirmary. The 50 were moved into the parish jail; Baton Rouge celebrated the Supreme Court decision of Dec. 11 by keeping 73 CORE pickets in jail through Christmas and New Year's.

* * *

There was a hunger strike for three days; Ronnie Moore charged that the guards had slapped him and other prisoners; the local FBI came around to ask the guards if they had slapped Ronnie Moore, and the guards said they hadn't; and that was that for that investigation and Warden Edwards called the prisoners together and said, "Lemme tell you one goddam thing. I runs this jail and no one is going to tell me to reprimand an officer. There's gonna be no more damn singing, no more damn hunger strikes, and no more damn beating on the walls."

They were let out Jan. 4 and went back to Southern University. Its president, Felton G. Clark, seems to have done his level best to limit the number of sacrifices demanded by his employer, the white Board of Education, and Baton Rouge District Attorney Sargent Pitcher. On Jan. 15, the college disciplinary board expelled Ronnie Moore, Weldon Rogeau and five other students for "misconduct."

That night, Moore, whose dismissal was not yet formal, went back to the campus to meet Rogeau, whose dismissal was. They were arrested by a sheriff's officer for trespassing at Southern; when they got to the jail, the charge was changed to criminal anarchy, which carries a 10-year sentence, and Moore's bail was set at $12,500,

They remained in isolated confinement for the 56 days from Jan. 18 to last Friday. Once District Attorney Pitcher told Moore that he would accept a guilty plea for sedition, which carries a mere five years.

* * *

Such, in Baton Rouge, is the consequence of reading Supreme Court decisions. Ronnie Moore read one, went downtown to enforce it, and now the District Attorney offers to let him off with five years if he agrees to confess himself a seditionist.

Moore was called once for questioning by a man from the District Attorney's office. Moore said he was only looking for fairness, and the District Attorney's assistant answered: "You talk about fairness because you're winning. But I'm losing like a dog. Fairness goes out the window when you're losing." If Negroes want rights, he went on, let them pay some of the taxes. "Let us make some of the money," Moore answered, "and we don't give a hoot about the taxes." The DA's man said Moore had been trained to evade questions and there was no sense asking him more.

Rougeau and Moore came out to find that Southern University upon reopening had barred 50 students from readmission. They are all still living in Baton Rouge on $10 a week apiece from CORE. The university is quiet now; one student led a protesting group to the dean's office the other day. "They were promised a juke box and a nationally known rock and roll singer for their dance," says Rougeau, "and they dispersed, and that one student stood there with tears in his eyes. But we've all got to stay in Baton Rouge. If we go, what happens to the movement?"

Distributed by (CORE) Congress of Racial Equality

38 Park Row, New York 38, New York

July 9th, 1962

Ernest A. Finney, Jr., Esq.
109 West Liberty Street
Sumter, South Carolina

Dear Ernest:

Enclosed is the material recently sent to me.

Please go ahead with the leaflet and the picketing cases. From our talk, it is clear that I agree with the approach that you are adopting and as you indicated the cases in both these areas are extremely numerous.

With best regards.

Sincerely yours,

CARL RACHLIN

CR:rk
enc.

546 SEDFRE

Louisiana vs Moore, Ronnie M. April-Sept. 1962
(Criminal Anarchy)

Box 3
Folder 4

State Historical Society of Wisconsin

Please Retain Original Order

Better make as [illegible] 6 copies if you can!

STATE OF LOUISIANA PARISH OF EAST BATON ROUGE

NINETEENTH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA

V.

RONNIE M. MOORE

NUMBER 42,604 SECTION " "

* *

CAPS

APPLICATION FOR BILL OF PARTICULARS

TO THE HONORABLE THE JUDGES FOR THE CIVIL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

NEW PARAGRAPH

NOW into this Honorable Court comes RONNIE M. MOORE, defendant in the above entitled and numbered cause, and before arraignment pleads that he is unable to propertly prepare his defense herein, until he is furnished with a Bill Of Particulars upon the following, to wit:

1. How many instances of unlawful advocacy of opposition to the government of the State of Louisiana did the defendant commit?

2. What were the dates of advocacy of opposition to the government of the State of Louisiana?

3. What means did defendant advocate as opposition to the government of the State of Louisiana?

4. Were the acts of defendant in advocating opposition to the government of the State of Louisiana oral or written?

5. If oral what were the oral statements made?

6. When were these oral statements made?

7. Were these statements made in public or private?

8. If public, how large was the group before which these statements were made?

9. If public, was the group composed entirely of students?

10. If public, were these statements made on the campus at Southern University?

11. What time of day were these public oral statements made?

12. Did anyone else make public oral statements at the same time as defendant?

13 ~~12a~~. Who, if any were these other persons?

14 ~~13~~. If oral and public, what observable result did the statements have on the listners?

15 ~~14~~. Specifically what statements were made publicly and orally which indicated opposition to the government of the State of Louisiana?

16 ~~15~~. If oral and public, did the defendant specifically mention the government of the State of Louisiana?

17 ~~16~~. If oral and public did the defendant mention the names of State Government Officials?

RONNIE MOORE

18. 17. What State Government Officials did defendant name?

19 18. Did defendant name Mr. Felton Clark President of Southern University in his speeches?

20 18a. What did the defendant say about Mr. Felton Clark?

21 19. Does the State contend that defendant violated L.S.A.-R.S. 14:115 by advocating that students at Southern University boycott classes?

22 20. Does the State contend that defendant violated L.S.A.-R.S. 14:115 by advocating that students boycott segregated facilities in downtown Baton Rouge?

23 21. Does the State contend that defendant violated L.S.A.-R.S. 14:115 by advocating that all Southern University Students and/or all Negroes abide by the U. S. Supreme Courts 1954 integration opinion.

24 22. Does the State contend that defendant violated L.S.A.-R.S. 14:115 by advocating opposition to all forms of ~~unconstitutional~~ Racial segregation?

25 23. Does the State contend that defendant violated L.S.A.-R.S. 14:115 by advocating ~~agreement~~ with the U. S. Supreme Courts 1954 integration decision? (compliance)

26 24. Does the State contend that defendant violated L.S.A.-R.S. 14:115 by advocating opposition to the government of the State of Louisiana yet did not violate that portion of L.S.A.-R.S. 14:115 which applies to the U. S. Government?

27 25. What were the unlawful means which defendant used to advocate opposition to the government of the State of Louisiana?

28 26. How many different unlawful means did defendant use in his advocating opposition to the government of the State of Louisiana?

29 27. If there were more than one occassion of so called unlawful advocacy of opposition to the government of the State of Louisiana did defendant use different means on different occassions?

30 28. What were the other unlawful means?

31 29. Does the State contend that defendant violated LSA-R.S. 14:115 By advocating reinstatement of students expelled from Southern University?

32 30. Does the State contend that defendant violated L.S.A.-R.S. 14:115 by indicating that he felt the students who were expelled from Southern University were expelled improperly and without a hearing?

33 31. Does the State contend that defendant violated L.S.A.-R.S. 14:115 when he indicated that he agreed with the holding of the U.S. Supreme Court in those cases which held some of the segregation laws of Louisiana unconstitutional?

34 32. Does the State contend that defendant violated L.S.A.-R.S. 14:115 by his disagreement with Southern Universities closing of the school prematurely for the 1961 Christmas Holidays?

35 33. Does the State contend that its unlawful to (publically and/or privately advocate) disagree ment with the states policy of segregation?

36 34. Does the State contend that its unlawful to speak publicly in favor of the U. S. Courts 1954 integration decision?

37 35. Does the State contend that its unlawful to verbally oppose segregation?

38 36. Does the State contend that its unlawful to speak out for what one feels are his Civil Rights?

RONNIE MOORE

39 ~~37~~. Does the State contend that its unlawful for the defendant to publicly disagree with the president of a State University on University Policy?

40 ~~38~~. Does the State contend that freedom of speech does not apply to University Campuses?

41 ~~39~~. Does the State contend that its unlawful to attempt to verbally convince others that segregation is unlawful?

42 ~~40~~. If oral and public, does the State have a recording of the alleged unlawful advocating of opposition to the government of the State of Louisiana?

43 ~~41~~. How did the State secure said recording?

44 ~~42~~. If the acts of defendant in advocating opposition to the government of the State of Louisiana were written does the State have a copy of said written material?

45 ~~43~~. How did the State secure said written material?

46 ~~44~~. Does the State have any pictures of defendant actually participating in said unlawful activity?

47 ~~45~~. Does the State have any written statements confessions or admissions from defendant?

48 ~~46~~. Does the State have any motion pictures of defendant participating in said unlawful activity?

49 ~~47~~. Did the defendant in his public oral advocacy mention any of the names of the members of the State Board of Education?

50 ~~48~~. In what context did he mention said persons?

51 ~~49~~. How many times has defendant been arrested in East Baton Rouge Parish.
[redacted]

52 ~~50~~. On what dates were defendant arrested? " " " " " .

53 ~~51~~. On what charges was the defendant arrested? " " " " " .

54 ~~52~~. How many days has defendant spent in jail on the various charges against him in EBR Parish.

55 ~~53~~. Specifically on what dates was defendant arrested and for what charges and how long did he stay in jail on each charge and when was he released from jail after each arrest in this Parish.

56 ~~54~~. How many instances does the State contend exist wherein defendant privately opposed the government of the State of Louisiana?

57 ~~55~~. Were these instances oral or written?

58 ~~56~~. If written does the State have a copy of said written information?

59 ~~57~~. How did the State secure said written information?

60 ~~58~~. Did the State use wire tapping or monitored telephones to secure information against defendants.

start 61 ~~59~~. Does the State have any written information showing that the Congress of Racial Equality is an organization advocating, teaching, and practicing unlawful opposition to the government of the State Of Louisiana?

62. If so, what is this evidence; will it be made available to the defendant.?

63. Does the state contend the alleged opposition advocated by the defendant (to be effected) ~~was~~ was by violent means?

~~RONNIE MOORE~~

64 ~~60~~. What were the means by which defendant is held to come by knowledge that the Congress of Racial Equality advocates, teaches and practices opposition to the government of the State of Louisiana.

65 ~~61~~. When did defendant come by the information that the Congress of Racial Equality advocates, teaches and practices unlawful opposition to the government of the State of Louisiana?

66 ~~62~~. Does the State contend that the Congress of Racial Equality is a communist organization?

67 ~~63~~. Does the State contend that the Congrees of Racial Equality is communist front organization?

68 ~~64~~. Does the State contend that defendant is a communist?

69 ~~65~~. Does the State contend that the Congress of Racial Equality is a communist infiltrated organization?

70

WHEREFORE, your defendant prays that the State of Louisiana through the District Attorney, be ordered by the Court to furnish the said Bill Of Particulars above requested; and that service of same be made upon your defendant. And your defendant prays for all such other relief to which he is or may be entitled.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street

MURPHY BELL
971 S. 13th Street
Baton Rouge, Louisiana

BENJAMIN E. SMITH
Civic Center Bldg.
New Orleans, Louisiana
Of Counsel

ORDER

LET HON. SARGEANT PITCHER, District Attorney for the Parish of East Baton Rouge be and he is hereby ordered to furnish the defendant, RONNIE M. MOORE the Particulars requested in the foregoing application, within_____days from the date hereof.

Baton Rouge, Louisiana______________, 1962.

____
JUDGE

Does the State contend that defendant violated LSA.-R.S. 14:115 by attempting to bring about a political revolution in the government of the State of Louisiana by force and/or violence?

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA

VS. NUMBER 42-604

RONNIE M. MOORE CRIMINAL DOCKET

* *

MOTION FOR HEARING ON THE APPLICATION FOR BILL OF PARTICULARS

TO THE HONORABLE, THE JUDGES OF THE CRIMINAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE:

AND NOW into Court, through undersigned counsel, comes RONNIE M. MOORE, accused herein, and suggests to the Court that he has been charged in a Bill of Information with violation of LSA-R.S. 14:115, Criminal Anarchy, and he further suggests that he has filed an Application for a Bill of Particulars, and that no date has been set for a hearing on said Application for Bill of Particulars. Your mover, the defendant herein, suggests to the Court that he is entitled to a hearing and ruling on the Application for a Bill of Particulars prior to a hearing on the Motion to Quash which has also been filed in the above matter.

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause, if any he has, why a hearing should not be granted on the Application for a Bill of Particulars in the above entitled and numbered cause.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

2211 Dryades Street
New Orleans 13, Louisiana

BY:________________________

MURPHY W. BELL
971 S. 13th Street
Baton Rouge, Louisiana

OF COUNSEL:

CARL RACHLIN, ESQ.
280 Broadway
New York, New York

BENJAMIN E. SMITH
Civic Center Building
New Orleans, Louisiana

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally came and appeared:

RONNIE M. MOORE

who after first being duly sworn did depose and say that all of the facts and allegations in the above and foregoing motion are true and correct.

____
RONNIE M. MOORE

SWORN TO AND SUBSCRIBED

BEFORE ME THE _____

DAY OF __________, 1962.

____
NOTARY PUBLIC

ORDER

CONSIDERING the foregoing Motion for a hearing on the Application for a Bill of Particulars, IT IS ORDERED that The Honorable Sargent Pitcher, Jr., District Attorney for the 19th Judicial District show cause on the ______day of May, 1962 at______o'clock M. why a hearing should not be had on the Application for a Bill of Particulars.

East Baton Rouge Parish

May, , 1962.

____
JUDGE

Anarchy

STATE OF LOUISIANA PARISH OF EAST BATON ROUGE

NINETEENTH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA

VS.

RONNIE M. MOORE

NUMBER 42-604 SECTION " "

* *

MOTION TO QUASH

TO THE HONORABLE THE JUDGES OF THE CRIMINAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

NOW into this Honorable Court comes RONNIE M. MOORE reserving his right to file other necessary pleadings herein, and having heard that he has been charged in a Bill Of Information in the above numbered and entitled cause for the Crime of Criminal Anarchy, and protesting that he is not guilty of the offense set out in the said Bill Of Information moves to Quash the Bill Of Information in its entirety for the reason that:

1. The Bill Of Information is insufficient to properly inform the accused of the offense with which he stands charged, as required by Sections 9 and 10 of Article I of the Louisiana Constitution of 1921-L.S.A., in that it states nothing more than a conclusion of law without any facts or circumstances upon which such a conclusion could be based more particularly so since the crime sought to be denounced by L.S.A. 14:115 Article 115 of the Criminal Code, is very sweeping, attempting as it does, to be sufficiently broad to apply to all forms of unlawful changes in the State or Federal Government. The crime of Criminal Anarchy there being described in such vague terms as; advocating unlawful opposition to the government of the United States or the State of Louisiana; as becoming a member of an organization advocating unlawful opposition to the government of the United States or the State of Louisiana, with the result that a reference to the Statute itself furnishes no aid in ascertaining just what acts of commission of his are considered as having contravened its provisions.

II. The wording of the Bill of Information is not in the unequivocal language of the statute and even if it were the statutory words do not in themselves fully, directly and expressly, without uncertainty or ambiguity, set forth all the elements and ingredients necessary to constitute the offense intended to be punished.

III. The statute under which the prosecution is based and the Bill of Information founded thereon are both so vague and indefinite and undertain as not to establish an ascertainable standard of guilt.

IV. The statue under which the prosecution is based and the Bill of Information founded thereon is unconstitutional in violation of Section 9 Article I of the Louisiana Constitution of 1921 which says that all criminal prosecutions "...be by indictment or information".

V. The statute under which the prosecutuion is based and the Bill of Information founded thereon permits the Judicial Department of Government to exercise a function which properly belongs to the Legislative Department.

VI. The statute under which the prosecution is based and the Bill of Information founded thereon invades the legislative field in which exclusive potential prosecution by the United States has superceded State Action and precluded this prosecution.

VII. The statue under which the prosecution is based and the Bill of Information founded thereon is unconstitutional and in violation of the sixth amendment of the constitution of the United States in that the defendant has not been informed of the nature and cause of the accusation.

VIII. The statue under which the prosecution is based and the Bill of Information founded thereon is unconstitutional because it violated the first amendment to the Constitution of the United States by depriving defendant of freedom of speech, and freedom of assembly and freedom of the press.

IX. The statute under which the defendant is charged and the Bill of Information filed thereunder is violative of the XIV Amendment to the Constitution of the United States in that defendant will be deprived of his liberty without due process of law because any prosecution, based upon a defective Bill of Information is necessarily defective.

equal protection?

WHEREFORE, the said RONNIE M. MOORE prays that this MOTION TO QUASH be maintained and the said Bill of Information be declared null and void and that he be discharged therefrom.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans, Louisiana

MURPHY BELL
971 S. 13th Street
Baton Rouge, Louisiana

BY__________________________

BENJAMIN E. SMITH
CIVIC CENTER BLDG.
NEW ORLEANS, LOUISIANA

OF COUNSEL

STATE OF LOUISIANA
EAST BATON ROUGE PARISH

BEFORE ME, the undersigned authority personally came and appeared:

RONNIE M. MOORE

who being duly sworn did depose and say that all of the facts and allegations contained in the above and foregoing Motion are true and correct.

____
RONNIE M. MOORE

SWORN TO AND SUBSCRIBED
BEFORE ME THIS ____ DAY OF
____________, 1962.

____
NOTARY PUBLIC

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally came and appeared:

RONNIE M. MOORE

who after first being duly sworn did depose and say that all of the facts and allegations in the above and foregoing motion are true and correct.

____
RONNIE M. MOORE

SWORN TO AND SUBSCRIBED
BEFORE ME THE _____
DAY OF ___________, 1962.

____
NOTARY PUBLIC

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3 man
court

STATE OF LOUISIANA PARISH OF EAST BATON ROUGE

NINETEENTH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA

VS.

RONNIE M. MOORE

Anarchy

NO: 42-604 SECTION " "

* *

MEMORANDUM IN SUPPORT OF MOTION TO QUASH

DEFENDANT was charged by a bill of information filed on February 12, 1962 with a violation of L.S.A.-R.S. 14:115 Criminal Anarchy. The Bill of Information is verbatim as follows:

> "...that RONNIE M. MOORE late of the Parish of East Baton Rouge, between the dates of December 8, 1961 and January 18, 1962 with force of arms, ? in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, feloniously did violate Revised Statute 14:115 in that he advocated in public and private ? opposition to the government of the State of Louisiana by unlawful means, and is a member of Congress of Racial Equality, an organization known ? to the offender to advocate, teach and practice opposition to the government of the State of Louisiana by unlawful means...."

Defendant was arraigned on March 30, 1962 prior to which time he reserved the right to later file necessary pleadings, and he filed a written motion attacking the jurisdiction of the court, a written motion applying for a Bill of Particulars, a written Prayer for Oyer and pleaded not guilty. Trial of these special pleadings was set for April 10, 1962. On this same day in the same court defendant was arraigned on two misdemeanor charges for violation of L.S.A.-R.S. 14:103.1, Paragraph A, sub paragraph 4, a state charge, and violation of Title 12, Chapter 3 Section 100 of the ordinances of East Baton Rouge Parish, Louisiana a municipal charge. Defendant pleaded not guilty first reserving his rights to later file special pleadings. He was given until April 5, 1962 to file said pleadings which pleadings were also set to be tried on April 10, 1962.

The most important of the relevant constitutional and statutory provisions are as follows:

a — with force and arms
b within East Baton Rouge
c between 12/8/61 & 1/18/62
d advocated in public & private opposition
e to Govt of La
f by unlawful means
and
(g) is a member of CORE
h) known to Moore to advocate & practice opposition to Govt of La by unlawful means

Criminal Anarchy L.S.A.-R.S. 14:115
Criminal Anarchy is: (1) The advocating or teaching, in any manner, in public or private of the subversion, opposition, on destruction of the government of the United States or of the State of Louisiana by violence or other unlawful means; or

(2) The organizing or becoming a member of any organization or society which is known to the offender to advocate, teach, or practice the subversion, opposition, or destruction of the government of the United States or of the State of Louisiana by violence or other unlawful means.
Whoever commits the Crime of Criminal Anarchy shall be imprisoned at hard labor for not more than ten years.

The VI Amendment to the Constitution of the United States reads in part:

> "In all Criminal Prosecutions, the accused shall enjoy the right to... be informed of the nature and cause of the accusation..."

Article I Section 9 of the Constitution of the State of Louisiana 1921 reads in part:

> "In all Criminal Cases"...prosecutions shall be by indictment or information".

Article I Section 10 of the Constitution of the State of Louisiana 1921 reads in part:

> "In all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him..."

L.S.A.-R.S. 15:216, Article 216 of the Code of Criminal Procedure states:

> "The rules of pleading contained in this code shall apply as much to affidavits and to informations as to indictments, and whenever the word "indictment" is used, unless it be the clear intent to restrict that word to the finding by a grand jury, it shall be taken to include affidavit and information.

L.S.A.-R.S. 15:288, Article 288 of the Code of Criminal Procedure states:

w/ B/P?

> Defects in indictments can be urged before verdict only by demurrer or motion to Quash, and the accused is not entitled to any Bill of Particulars as to the subject matter charged in the indictment, but the trial judge may, in his discretion, require the District Attorney to file in the case such data as, in the opinion of the judge may be sufficient.

L.S.A.-R.S. 15:284, Article 284 of the Code of Criminal Procedure states:

> Every objection to any indictment shall be taken by demurrer or by Motion to Quash such indictment, before arraignment; and every court before which any such objection shall be taken for any formal defect, may, if it be thought necessary, cause the indictment to be forthwith amended in such particular and thereupon the trial shall proceed as if no defect had appeared.

LS.A.-R.S. 15:286, Article 286 of the Code of Criminal Procedure states:

> Any defect apparent upon the face of the indictment, or any defedt fatal to the validity of the proceedings may be set up in a motion to Quash the indictment, whether such fatal defect be one apparent upon the face of the record, or be such as can be established only by the production of evidence.

LSA-R.S. 15:2, Article 2 of the Code of Criminal Procedure states in part:

> "...all prosecutions for offenses not capital, shall be by indictment or by information..."

L.S.A.-R.S. 15:227, Article 227 of the Code of Criminal Procedure states:

> "The indictment must state every fact and circumstance necessary to constitute the offense, but it need do no more, and it is immaterial whether the language of the statute creating the offense, or words unequivocally conveying the meaning of the statute, be used.

L.S.A.-R.S. 15:235, Article 235 of the Code of Criminal Procedure states in part:

> "The following forms of indictments may be used in the cases in which they are applicable, but any other forms authorized by this or any other law of this state may also be used: (Then follows a list of examples of short forms indictments for a specific number of offenses)... Provided that in all cases of crimes included in the Criminal Code but not covered by the short forms hereinbefore set forth, it shall be sufficient to charge the defendant by using the name and article number of the offense committed. Provided, further, that the indictment may, in addition to the necessary averments of the appropriate short forms hereinbefore set forth, also include a more particularized statement of the facts of the offense charged; and, that this may be done without affecting the sufficiency of the short form indictment authorized by this article. Provided further that the District Attorney, if requested by the accused prior to arraignment, may be required by the judge to furnish a Bill of Particulars setting up more specifically, the nature of the offense charged".

It is the position of this Memorandum that the Bill of Information is fatally defective bedause it tracks that portion of L.S.A.-R.S. 14:115 which is general, generic and vagus. As authority for this conclusion the writer cites the following quotation from rehearing in the case of State V. Varnado 23 So. 2d 106 (1944) rehearing 1945 which quotation originally comes from 27 Am. Jur. 660 Section 101 and 27 Am. Jur. 662 Section 103:

> "It is the modern rule, universally applied by the courts, that in charging a statutory offense it is not necessary to use the exact words of the statute. An indictment or information for such an offense is sufficient if it follows the language of the statute substantially or charges the offense in equivolent words or others of the same import, if the defendant is thereby fully informed of the particular offense charged, and the court is enabled to see therefrom on what statue the charges is founded...."
>
> "The general rule...is without application where the statutory words do not in themselves fully, directly and expressly, without uncertainty or ambiguity, set forth all the elements and ingredients necessary to constitute the offense intended to be punished. As the courts have pointed out,
>
> > the words of the statute may be sufficient to describe or legally characterize the offense denounced, and yet be wholly insufficient to inform the accused of the specific offense of which he is accused, so as to enable him to prepare his defense or plead his conviction or acquittal as a bar to further prosecution for the same offense, as where the statute characterizes the offense in mere general or generic terms....and information charging an offense in the words of a statute which defines an offense generally is insufficient where it alleges the offense in the language of the statute, but does not state the specific acts on which the charge is based, and is not sufficiently

> definite to be of any value as a bar to further prosecution. In order to particularize the offense it is necessary in some instances, in addition to the statutory words of general description, to set forth the things or means used or other statements of facts and circumstances, as with respect to time, place, person, or other circumstances to identify the particular transaction...."

As was pointed out by the Supreme Court of the United States in United States v. Simmons, 96 U. S. 360, 24 L. Ed. 819, and cited in Justice Fournets dissent at the original hearing in the Varnado Case:

> "Where the offense is purely statutory...it is, as a general rule, sufficient in the indictment to change the defendant with acts coming fully within the statutory description in the substantial words of the statute, without any further expansion of the matter....but to this general rule there is the qualification, fundamental in the law of criminal procedure, that the accused must be apprised by the indictment, of what he must be prepared to meet; and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction".

The Bill of Information herein does not satisfy the requirements set up by the case of United States v. Cruishank 97 U. S. 542, 23 L. Ed. 588. The bill does not furnish the accused with such a description of the charge as would enable him to make his defense, NOR DOES it furnish him with sufficient information so that he might avail himself of his conviction on acquital against a further prosecution for the same offense. Thirdly, the Bill of Information does not inform the court of the facts alleged so that the court may decide whether the facts are sufficient to support a conviction, if one be had. The Bill Of Information is sorely lacking in this respect for it does not allege a single fact or circumstance upon which the information is based. All that appears from the information is that in the opinion of the District Attorney the accused is guilty of advocating unlawful opposition to the government of the State of Louisiana and guilty of knowingly being a member of an organization which advocates, teaches and practices unlawful opposition to the government of the State of Louisiana. The specific wordding of a portion of the Cruisbank /Case is as follows:

> "The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defense, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and second, to ingorm the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment with reasonable particularity of time, place, and circumstances".

It is the position of this Memorandum that because the Bill Of Information does not inform defendant of the nature and cause of the accusation he can invoke a triple guarantee, the federal constitution, the state constitution and state stattutes. The VI Amendment to the Federal Constitution provides that the accused shall enjoy the right to be informed the nature and cause of the accusation against him. Article I Section 9 of the Constitution of the State of Louisiana provides that in all criminal cases prosecutions shall be by indictment or information Article I Section 10 of the Constitution of the State of Louisiana provides that in all criminal prosecutions the accused shall be informed of the nature and the cause of the accusation against him. L.S.A.-R.S. 15:2, Article 2 of the Code of Criminal Procedure states in part that all prosecutions for offenses not capital shall be by indictment or by information. It is primarily upon these provisions of the law upon which defendant relies for support in that phase of the Motion to Quash which deals with the defectiveness of the Bill of Information. It is to be noted that these constitutional provisions relied on by defendant are of the highest quality and when in competition with legislative acts should prevail. Mrre specifically in any contest between Article I Sections 9 and 10 of the Louisiana Constitution and L.S.A.-15:235 the State Constitution prevails. A very important case welied on by defendant is State v. Blanchard (226 La. 1082) (78 So. 2d 181) a 1955 case in which defendants were convicted and sentenced under a Bill Of Information charging that they:

> Unlawfully possessed a mechanically and/or manually operated devise, without explosives, for the purpose of illegally taking commercial fish; in violation of the provisions of (LSA-) R.S. 56:366 of the State 6f Louisisaa, as amended by Act 194 of 1952.

The Bill Of Information above follows the language of the statute but the court held the statutory words do not in themselves set forth the elements necessary to constitute the offense intended to be punished. The court used the same logic cited previously from 27 Am. Jur. and the U. S. Supreme Court cases of U.S. v. Simmons and U. S. v. Cruishank previously cited. Note there were no dissents in the Blanchard Case.

A case in which there were three dissents is also relied on by defendant. This case State V. McQueen (230 La. 55) (87 So. 2d 757) 1955 stands for the proposition that a Bill of Information which does not apprise the defendant of what he must be prepared to meet on the trial is fatally defective. This is the test set out by the court:

> In this case the information is based on conclusions of law, which are legal abstractions affording no protection. The U. S. Supreme Court has spoken and provided a test in such instances. It stated that the test is not whether it (the information) could have been more definite or certain, but whether the information contains the elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet, and in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction. See, Cochran and Sayre v. U.S., 157 U.S. 286, 15 S. Ct. 628, 39 L. Ed. 704; Rosen v. U.S. 161 U.S. 29, 16 S. Ct. 434, 40 L. Ed. 606, Hagner v. U.S. 285 U.S. 427, 52 S. Ct. 417, 76 L. Ed. 861.

Further on the court quite succintly says:

> We do not find anywhere in the Code of Criminal Procedure provision that an accused charged in an indictment or infor that fatally fails to apprise him of the acts on which the offenses with which he is sought to be charged is based must probe the innermost recesses of the prosecuting attorneys, mind in an effort to ascertain just what acts of his the attorney thinks constitutes a crime".

The defense contends that the Bill of Information under which the defendant is charged is a fatal attempt at using the short form of the Bill Of Information. This is so because Criminal Anarchy is not one of the offenses in which specific authorization is given to so do. Further, the fact that the case of State v. Straughn specifically declared null and void that portion of R.S. 15:235 which says, "it shall be sufficient to charge the defendant by using the name and article number of the offense committed" leads one to the inescapable conclusion that the only legal way one can be billed for violation of the Criminal Anarchy statute is by the long form of the Bill Of Information.

State V. Straughan (229 La. 1036) (87 So. 2d 523) 1956 is the first case to squarely meet the question of the validity vel non of an indictment or information referring to the crime charged by name and number only, as authorized by the 1944 amendment to Article 235. In it defendants were charged with "gambling". Chief Justice Fournet in a brilliantly written decision holding the authorization for short form indictment by name and number unconstitional pointed out that a Bill of Particulars could not cure a defective Bill of Information.

Another recent pronoundement to that effect by the State Supreme Court was in the decision on rehearing of the case of State v. Varnado previously cited.

Prior to the Straughan Case there had been considerable opinion both ways as to the validity of the short form of indictment and as to the proper function of the Bill of Information. This is what Chief Justice Fournet said in the Straughan Case:

> We have held this appeal under advisement for several terms of court in order that we might make an exhaustive research into the matter of the so-called short form of Criminal Charge and the proper function of the Bills of Particulars in Criminal Cases under our constitutional form of government so that we may set at rest in so far as Louisiana is concerned, the controversy that has apparently raged in this country ever since the American Law institute released in June of 1930 its draft of a proposed model code of Criminal Procedure.

Most if not all of the subsequent cases have held that a Bill of Particulars cannot cure a defective Bill Of Information. In this respect it should be pointed out that the legislature is not authorized to adopt any law procedural or substantive which would infringe upon any of the rights of the accused as guaranteed him by the Constitution of this state.

With respect to the interpretations of the Straughan Case a reference to Professor Dale E. Bennett's article under that section of the Louisiana Law Review for 1959 specifically XIX La. L. Rev. 407 said:

> Justice Fournets' opinion indicated a continued adherence to the view that the specific short forms of Article 235 were sufficient in charging crimes having a well defined meaning and scope, such as murder, theft, or rape. Any doubts in this regard were dispelled by the Supreme Courts 1958 decision in State v. Elias which upheld a conviction of attempted murder. Justice Porder, writing for a unanimous court, distinguished the Straughan Case where the charge was brought under the 1944 amendment. The Supreme Court has clearly and consistently held that this amendment carries the short form beyond constitutional bounds. The Supreme Courts position as to how far the legislature may go in authorizing short form indictments is now rather clear. It will continue to sustain the validity of specific short forms for the well understood crimes, such as murder or attempted murder; but has drawn the line upon charging multifarious and purely statutory crimes such as gambling or abscenity, by name and article number.

Finally, we maintain that no matter which position is taken, that position of the pre-Straughan or Post Straughan era the logic as applied to the facts herein impell the sustaining of the Motion to Quash. Let us use State v. Hebert (205 La. 110) (17 So. 2d 3) 1944 as a typical example of what is meant when one speaks of the pre-Straughan era, There the defendant was charged in 6 bills of Information with indecent behavior. Each bill charged that:

> He "... being over the age of seventeen did unlawfully and feloniously commit indecent behavior, as defined by Article 81 of the Louisiana Criminal Code (Act 43 of 1942), with _____________ a juvenile under the age of seventeen years.

In sustaining the Motion to Quash this substantially is what was said: since indecent behavior as defined in the statute could consist of either a lewd or lascivious act on or in the presence of one under the age of seventeen and since the Bills of Information did not specify which of the two acts defendant is to be tried on the bills are defective. We maintain that for a stronger reason the Bill of Information herein is defective, that reason is there are in many ways of unlawfully opposing the government of the State of Louisiana by unlawful means. Which unlawful method of opposition has the defendant been alleged in this Bill of Information to have used.?

STATE OF LOUISIANA PARISH OF EAST BATON ROUGE
NINETEENTH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA
VS.
RONNIE M. MOORE

Anarchy

NO: 42-604 SECTION " "

* *

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO QUASH

TO THE HONORABLE THE JUDGES OF THE CRIMINAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

Many cases have been tried and, much has been written and much corrective legislation has been passed involving the short form indictment. Necessarily much of this relates back to the history of Criminal Law. Thus it becomes necessary to briefly review said history. The indictment dates from the guarantees contained in the Magna Carta and the sixth amendment to the Constitution of the United States provides that the accused shall be informed of the nature and cause of the accusation. Both provisions are incorporated in our State Constitution thus affording them a guarantee of the highest quality. Not only has the guarantee to be informed of the nature and cause of the accusation been included in our 1921 State Constitution but it was felt so necessary that it has been included in all eight constitutions that have formed the organic law of this state, beginning with the first one drafted in 1812.

These guarantees as thus phrased in our organic law are to be found in the constitution of no other state. Only eleven states including Louisiana guarantee that an accused will be informed of the nature and/or cause of the accusation. While most states do not have constitutional guarantees that the accused be apprised of the nature and cause of the accusation the overwhelming majority of them do have specific statutory requirements that the indictment or information contain a statement of the facts or acts upon which the charge is predicated, or else that the charge be in plain concise language that is easily understandable, direct and certain.

Filed 4/2/62

Sound Truck denied

STATE OF LOUISIANA PARISH OF EAST BATON ROUGE

NINETEENTH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA

VS.

RONNIE M. MOORE

NUMBER: 43,067 DIVISION:

****

MOTION FOR A CONTINUANCE

NOW INTO COURT, through undersigned counsel, comes RONNIE M. MOORE RESERVING ALL of his rights to file other preliminary pleadings herein, and having been arraigned in this cause on March 30, 1962 and having notified the Court of intentions of filing other motions herein, but that notwithstanding said Court having fixed the trial in this cause on April 10, 1962, said Mover represents:

1.

That on the same day, March 30, 1962, your Mover was arraigned and pleaded "not guilty" to two other charges, one of which was CRIMINAL ANARCHY; that certain motions were filed and set down for argument in that case on April 10, 1962; that therefore counsel for accused does not have sufficient time to prepare an adequate defense in the trial of the cause hereof.

2.

That all of the alleged crimes of which the accused has been booked and formally charged grew out of your Mover's opposition to various forms of racial discrimination which he encountered in East Baton Rouge Parish between the dates of December 8, 1962 and January 18, 1962; that accordingly said trial should be consolidated or at least continued until the relative and correlative effects of the one upon the other can be fully investigated by accused counsel in order that an adequate defense can be prepared.

3.

That certain witnesses are absent from the State of Louisiana that said witnesses are expected to testify that accused could not have committed said crime; that said facts can be proved by no other witnesses in attendance upon the court; that said are presently in New York City; that their attendance can surely be had by April 31, 1962; that said witnesses were available until March 28, 1962, but but unawares that accused"s trial would be set within ten days, left for New York City to attend to personal business,

WHEREFORE, the said RONNIE M. MOORE prays that this motion for continuance be filed and a rule nisi issue out of this Honorable Court, commanding Honorable SARGENT PITCHER, JR., District Attorney, to show cause, if any he has, why the motion for continuance should not be granted.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

2211 Dryades Street
New Orleans 13, Louisiana

MURPHY BELL
971 S. 13th Street
Baton Rouge, Louisiana

OF COUNSEL:

BENJAMIN E. SMITH
Civic Center Building
New Orleans, Louisiana

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority appeared:

Murphy W. Bell

who being duly sworn did depose and say that he is one of the attorneys for the accused, Ronnie M. Moore; that all of the allegations of fact herein are true and correct to best of his knowledge, information and belief.

Murphy W. Bell

SWORN TO AND SUBSCRIBED BEFORE ME, this 2nd day of April 1962

NOTARY PUBLIC

ORDER

The foregoing motion considered, IT IS ORDERED that Honorable SARGENT PITCHER, JR., DISTRICT ATTORNEY show cause, if any he can, on ____day of April at ______ o'clock A.M. why a motion for a continuance should [illegible]ted in this cause.

Baton Rouge, Louisiana, April ____1962.

____
JUDGE

anarchy

STATE OF LOUISIANA PARISH OF EAST BATON ROUGE
NINETEENTH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA
VS.
RONNIE M. MOORE

NO: 42-604 SECTION " "

* *

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO QUASH

TO THE HONORABLE THE JUDGES OF THE CRIMINAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

Many cases have been tried and, much has been written and much corrective legislation has been passed involving the short form indictment. Necessarily much of this relates back to the history of Criminal Law. Thus it becomes necessary to briefly review said history. The indictment dates from the guarantees contained in the Magna Carta and the sixth amendment to the Constitution of the United States provides that the accused shall be informed of the nature and cause of the accusation. Both provisions are incorporated in our State Constitution thus affording them a guarantee of the highest quality. Not only has the guarantee to be informed of the nature and cause of the accusation been included in our 1921 State Constitution but it was felt so necessary that it has been included in all eight constitutions that have formed the organic law of this state, beginning with the first one drafted in 1812.

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These guarantees as thus phrased in our organic law are to be found in the constitution of no other state. Only eleven states including Louisiana guarantee that an accused will be informed of the nature and/or cause of the accusation. While most states do not have constitutional guarantees that the accused be apprised of the nature and cause of the accusation the overwhelming majority of them do have specific statutory requirements that the indictment or information contain a statement of the facts or acts upon which the charge is predicated, or else that the charge be in plain concise language that is easily understandable, direct and certain.

Not only does the Louisiana State constitution guarantee the accused that he will be informed of the nature and cause of the accusation and that he will be prosecuted by indictment or information only, but our legislature, aware of this constitutional mandate, included in the Code of Criminal Procedure, Articles 227 (L.S.A.-R.S. 15:227) and Artiile 216 (L.S.A.-R.S. 15:216), which embodies these principles. These enactments have never been repealed.

In 1928 the Louisiana Legislature adopted a Code of Criminal Procedure in which Article 235 provided specific authorization for the short form indictment for certain enumerated crimes. This was done one year after The American Law Institue compiled a tentative code of Criminal Procedure. In 1942 the Code of Substantive Criminal Law was adopted in which the basic crimes were regrouped and a new terminology employed. At this point I call the attention of the court to footnote number 3 page 525 in the case of State v. Straughan (229 La. 1036) (87 So. 2d 523) 1956 which says:

So far as we have been able to determine,

> there is no comparable code in any other state, and the crimes denounced in our criminal code are far more broad and general than the language used in any other statutes. This is understandable in view of the fact that several hundred statutes of Louisiana denouncing certain acts as criminal were at the time the Criminal Code was drafted incorporated in 142 short articles.

The American Law Institute in 1930 released its Model Code of Criminal Procedure based upon what it thought the law ought to be. Most of the states which provide that a Criminal Charge may be made by name and statute number have unquestionably patterned their legislation upon the procedure recommended by the American Law Institute in its Model Criminal Code. These states have used Section 154 of the Model Criminal Code which provides in substance that an indictment or information is sufficient if it charges the offense;

(1) by the use of the name given it at common law or by statute.
(2) by so much of the definition of the offense as will give the court notice of the offense intended to be charged.
(3) By reference to the section or subsection of the statute creating the offense.

Significantly the institued realized such a charge would not meet the constitutional guarantees in the various states and so in drafting Section 155, provided that "when the offense so charged fails to give the accused the information to which he is entitled under the constitution of the state, the court may in its discretion, or shall upon demand of the accused, order the prosecuting attorney to furnish such info in a Bill Of ~~Information~~ PARTICULARS".

There is no question but that this code, as reflected by the succeeding articles and also the proceedings at which they were discussed before final approval, intended that the indictment state "the bold offense" relegating to the Bill Of Particulars the function of stating "just enough facts as would now make an indictment valid if they were put in the indictment". In other words, the Bill Of Particulars, regardless of constitutional provisions, was to be used as the vehicle for charging the nature and cause of the accusation, not the indictment or information, a procedure that up until that time had never in State v. Benham, Ariz. 118 P 2d 91, 93, commenting on similar provisions in that state patterned on the institute code. "In view of the simplified forms of indictments and information under the New Criminal Procedure, Bills of Particulars assume an important place in Criminal Trials. What was formerly essential to allege in the indictment or information may now be supplied to a defendant in a Bill Of Particulars."

Such a procedure is not only not authorized under our basic law, it is also contrary to all concepts of the Criminal Charge by indictment or information that previously obtained in the several states, as well as in England, where these documents from time immemoval, were used for the purpose of properly, clearly, and plainly informing the accused of all of the facts upon which the accusation against him was founded. The so-called over simplified procedure recommended by the institute therefore substituted for the Criminal Charge under the common law "notice" only of such a charge, making the indictment or information a mere process pleading without the inclusion of a single fact upon which the charge was based, thus leaving the accused in total darkness as to the acts of omission or commission constituting the bases of the accusation and making it impossible for him to prepare for his defense.

clarity

Every Criminal Charge under the common law of England, upon which the Criminal Law of this state was based, was a compound of law and facts. Blackstone, the great English Authority, as long ago as 1769, stated an indictment is a written accusation which must have a "precise and sufficient certainty", the offense itself therein being "set forth with clearness and certainty". Lord Hale defined an indictment as "nothing else but a plain, brief, and certain narrative of an offense committed by any person, and those necessary circumstances that concur to ascertain the facts and its nature".

In United States v. Potter, C. C., 56 F83, 89, it is very aptly apointed out that

> "In order to properly inform the accused of the 'nature and cause of the accusation", within the meaning of the constitution and the rules of the common law, a little thought will make it plain, not only to the legal, but to all other educated minds that not only must all the elements of the offense be stated in the indictment, but that also they must be stated with clearness and certainty and with ~~clearness and~~ a sufficient degree of particularity to identify the transaction to which the indictment relates as to place, persons, things and other details".

The Press of Freedom:

Criminal Anarchists

by David McReynolds

Last Monday I sat and talked for an hour with Charles McDew, chairman of the Southern Nonviolent Coordinating Committee (SNCC), who was passing through town to help raise funds and win public support for the three Southern students, two Negro and one white, who have been arrested and charged with criminal anarchy by the sovereign State of Louisiana. McDew is one of the three, and presently free on $7000 bail. Twenty-three years old, born and raised in Ohio, and until recently a sociology major at State College in Orangeburg, South Carolina, McDew is part of a new generation that is rising in the South. I asked him how many times he had been arrested in the course of demonstrations. "Twenty-six times," he clipped out, proud of the record. And how many times had he been physically assaulted? He thought a moment and said he didn't really know—somewhere between 10 and 15 times. He is a proud young man, stocky and solidly built, without a trace of that other-worldly gentleness which is assumed to be the prerequisite for using nonviolence.

Aside from a brief editorial in the Post, a piece by Kempton, and a small item in the news columns of the Times, the story of McDew and his four co-workers has been left largely untouched by the New York press. And yet the story is so shocking that one might expect it to be a national concern.

Charge Increased

On the evening of January 15, 1962, in Baton Rouge, Louisiana, Ronnie Moore (chairman of the Baton Rouge CORE and a student at Southern University, a Negro college) and Weldon Rougeau (vice-chairman of Baton

Continued on page 6

CORE Rally

The Congress of Racial Equality (CORE) will sponsor a rally on Thursday, April 12, at 7 p. m. at Roosevelt Auditorium, 17th Street at Union Square East. Speaking at the rally will be Ronnie Moore, Charles McDew, and Weldon Rougeau, integrationist leaders who are charged with "criminal anarchy" in Baton Rouge, Louisiana. Other speakers include Jim Peck, Dick Gregory, and James Farmer, national director of CORE.

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Criminal Anarchists

Continued from page 1

Rouge CORE, and also a student at Southern University) were arrested and charged with trespassing, and bail was set at $3000. When CORE attorneys asked to have the bail reduced, it was increased to $7000 in the case of Rougeau and $12,500 for Moore—and the charge was changed from trespassing to criminal anarchy. They remained in jail until March 16, when bail was finally raised.

Their crime? They were among over 2000 students from Southern University who had attempted, in a responsible, legal, and nonviolent way, to enforce the decision of the Supreme Court of last December 15 that CORE had a right to picket in protest against segregated lunch counters in Baton Rouge. As a direct result of the 15th day of January they had been expelled from Southern University for "misconduct." That evening they were arrested.

On February 17 three members of the Southern Nonviolent Coordinating Committee were in Baton Rouge to see if any of the expelled students wanted to help out with SNCC work in Mississippi. One of the three visitors, 19-year-old Dion Diamond, was arrested almost immediately after his arrival, was charged with criminal anarchy, and bail was set at $13,500. Shortly afterward, Charles McDew and Robert Zellner went to the jail to visit Diamond and bring him cigarettes and books. They were arrested, held on vagrancy charges (despite having more than $200 on them), and four days later learned the charge had been changed to criminal anarchy. Their bail has been set at $7000 each. Charges of criminal anarchy were later dropped in the case of Rougeau and Diamond—which I take it means Louisiana is two-fifths of the way toward the twentieth century.

Ancient Law

Conviction on a charge of criminal anarchy brings with it a maximum 10-year prison term. It is an ancient law, passed during World War I to protect the state of Louisiana from Germans and Wobblies. It has never before been used against the Civil Rights movement. The exact crime which kept these students in a filthy county jail for months before bail was raised, and which may now send them to prison for 10 years, is a bit difficult to establish. The actual charge against two of them (Zellner and McDew) reads as follows: "John Robert Zellner and Charles McDew on or about the 17th day of February in the year of our Lord Nineteen Hundred and Sixty-Two in the Parish of East Baton Rouge . . . feloniously did violate Louisiana revised statute No. 15114 in that they did in private and in public advocate opposition to the government of Louisiana and are known to be members of the Southern Nonviolent Coordinating Committee, an organization which is known to be in opposition to the government of Louisiana." The charge is similar in Moore's case. The crime, then, is simply that "they did in private and in public advocate opposition to the government of Louisiana." In the State of Louisiana the Bill of Rights is worth about as much as a Federal treaty with the Indians.

Hardly Time

But only one of the three students faces 10 years in prison for actions in the state of Louisiana itself. The other two—McDew and Zellner—*were simply visiting the state,* had barely disembarked from their bus, and hardly had enough time properly to commit criminal anarchy even if they knew (as I confess I do not) exactly what criminal anarchy is.

Does this mean that anyone who belongs to groups opposing totalitarian governments will be arrested if they venture into Louisiana? Would the President. the law and arrests will be struck down at the level of the Supreme Court and therefore we need not worry. But the catch is that even if the law is struck down (and it is unduly optimistic to assume so automatically that the Bill of Rights will be enforced) *there will be no bail granted from the time of conviction in the state court until the time of reversal in the Supreme Court.* This is one of those laws under which you don't get bail once you are convicted! And this means that even if the case reaches the Supreme Court as swiftly as is legally possible, a *minimum* of 200 days must pass before the students can be free. Their conviction seems certain in the lower courts. The first trials are in May. That means that with the *best possible luck* and greatest possible speed, these three boys will be in jail until late in the month of November. With moderately good luck they will be in jail for a year or two. With bad luck they will be in jail for 10 years.

Is the Federal Government really without power to act? Twice now groups of students have staged sit-ins at Attorney General Kennedy's office, in a plea for Federal action. And twice they have been offered coffee (the Kennedy brothers are nothing if not courteous) and then taken gently out in wheel chairs in order to avoid the publicity which arrest would bring. Our government broke solemn treaties solemnly entered into when we backed the Cuban adventure, on the ground that "communism 90 miles from home" was too serious a danger to permit legalism. What about this tyranny in Louisiana, which, unfortunately, is *within* our borders? Does that state—or any state—have the right to violate the Constitution with impunity, knowing that by the time the Supreme Court has struck down its barbarous laws it will already have exacted months or years of freedom from those who dared oppose it?

How long have we the right to expect the Charles McDews of America to be arrested on behalf of all of us? How many times dare we to ask a proud and husky young man to turn his cheek? Charles McDew, and his co-workers, who sought only to secure the basic human rights guaranteed them by the Constitution, have been repeatedly assaulted, beaten, had police dogs and tear gas unleashed upon them, been jailed, and now finally stand charged with criminal anarchy. Proud as I am of our first manned orbit in space, I am prouder still of these students and the hundreds like them, North and South. I honor the courage of John Glenn, but I honor these students more. Glenn's courage was rewarded with the adulation of a nation. These students have been rewarded only with prison. And they face more prison terms in the future, even if they are finally freed of this charge. If the American dream is ever to be fulfilled, they will be the ones to do it. I would not blame them if, in this bitter hour, they did not believe in America. But lost and sick as this nation is, we had damn well better believe in them. These students represent what decency we have left as a nation. We need them far more desperately than they need us.

Vast Job

But I don't want to close with rhetoric. If you want to join hands with those who are fighting in the South, remember there is a vast job still to be done in the North. CORE has its offices at [illegible] York 38. It will welcome [illegible] to be used in its legal fight to free these students. Even more, it will welcome you as a member.

War Resisters' Dinner

The War Resisters League will hold its 39th annual dinner on Sunday, April 15, in the Regency Room of the Hotel George Washington, 23rd Street and Lexington Avenue.

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Does this mean that anyone who belongs to groups opposing totalitarian governments will be arrested if they venture into Louisiana? Would the President, who was elected on a platform clearly "in opposition to the government of Louisiana," be able to secure safe conduct through the state? And if Louisiana can arrest persons who are not residents of the state, and whose only crime is membership in an organization which is hostile to the state, and who are themselves only passing through the state—if all this is so, I wonder if the state of Louisiana might not validly ask the state of New York to extradite the leaders of CORE who have their headquarters here, on the ground that CORE is opposed to the government down there? Perhaps The Voice can be charged with a conspiracy to commit criminal anarchy, by virtue of running an article "in opposition to the state of Louisiana." There are fascinating ramifications to this case occuring "in the year of our Lord" 1962.

You may say it is obvious that

preme Court. This is one of those laws under which you don't get bail once you are convicted! And this means that even if the case reaches the Supreme Court as swiftly as is legally possible, a *minimum* of 200 days must pass before the students can be free. Their conviction seems certain in the lower courts. The first trials are in May. That means that with the *best possible luck* and greatest possible speed, these three boys will be in jail until late in the month of November. With moderately good luck they will be in jail for a year or two. With bad luck they will be in jail for 10 years.

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May 12, 1962

Carl Rachlin, Esq.
280 Broadway
New York, New York

Re: Ronnie Moore
~~Criminal Anarchy~~
App. for Bill of Particulars

Dear Carl:

Enclosed please find Motion re: above which Murphy Bell will file Monday, 5-14-62.

Respectfully,

COLLINS, DOUGLAS & ELIE

BY Nils

NRD/aem

Enclosure

June 1st, 1962

Lolis Elie, Esq.
2211 Dryades Avenue
New Orleans, Louisiana

Dear Lolis:

Enclosed is a photocopy of a lengthy quotation from the case of Russell, et al v. United States decided May 21, 1962 by the U. S. Supreme Court. The quotation as you will see bears directly on the right of the State to indict Ronnie Moore solely in terms of the statute without details.

Best regards.

Cordially yours,

CARL RACHLIN

CR:rk
enc.

Sup Ct of the U.S.
Nos 8, 9, 10, 11, 12 & 18
Oct Term 1961

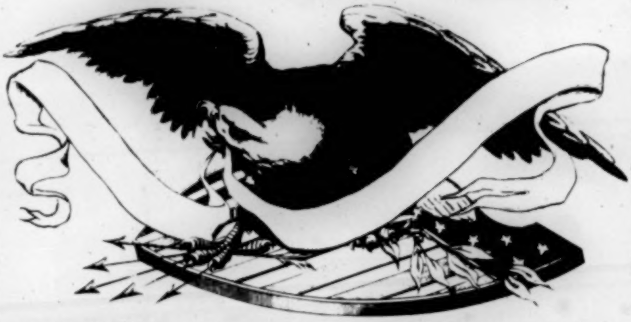
Russell, Shelton, Whitman
Liveright, Price, Gojack
v U.S.
May 21, 1962

Stewart

p 15 of Opinion

It is an elementary principle of criminal pleading, that where the definition of an offence, whether it be at common law or by statute, 'includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition, but it must state the species, — it must descend to particulars.'" United States v. Cruikshank, 92 U.S. 542, 558. An indictment not framed to apprise the defendant, "with reasonable certainty, of the nature of the accusation against him ... is defective, although it may follow the language of the statute." United States v. Simmons, 96 U.S. 360, 362. "In an indictment upon a statute, it is not sufficient to set forth the offence in the words of the statute, unless those words of themselves fully, directly, & expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offence intended to be punished; . . ." United States v. Carll, 105 U.S. 611, 612. "Undoubtedly the language of the statute may be used in the general description of an offence but it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offence, coming under the general description, with which he is charged." United States v. Hess, 124 U.S. 483, 487. See also Pettibone v. United States, 148 U.S. 197, 202-204; Blitz v. United States, 153 U.S. 308, 315; Keck v. United States, 172 US 434, 437; Morissette v. United States, 342 U.S. 246, 270, n. 30. Cf. United States v. Petrillo, 332 U.S. 1, 10-11.[12] That these basic principles of fundamental fairness retain their full vitality under modern concepts of pleading, and specifically under Rule 7(c) of the Federal Rules of Criminal Procedure, is illustrated by many recent federal decisions.[13]

IT HAPPENED IN BATON ROUGE, U★S★A



* * *

a real life drama of our DEEP SOUTH today

* * *

BY

MAJOR JOHNS
AND
RONNIE MOORE

Southern University students
☞ expelled ☜
for their role in the
Civil Rights struggle!

A

★★★

BY

ACT I

Y MAJOR JOHNS

MARCH, 1960. Some Negro university and college administrations have supported their students' lunch counter sit-ins or, at least, have remained neutral. Others have taken a stand in opposition to the students. Southern University in Baton Rouge and its president, Dr. Felton G. Clark fall in this latter category.

Dr. Clark had the opportunity of taking a courageous position and becoming one of the world's most respected educational leaders. Instead, he chose to buckle-under to the all-white State Board of Education, which administers the university.

Early in March, 1960, the Board issued a warning that any student participating in a sit-in would be subject to "stern disciplinary action." *The sit-in movement had not yet spread to Baton Rouge but, as one law student expressed it:* "When the Board spoke, it became a challenge to us and we could not ignore it." *A representative student committee then met with Dr. Clark and asked, specifically, what would happen to students who sat-in. He replied that the Board had left him no alternative but to expel them.*

Scene 1: The Lunch Counters

On March 28, seven students sat-in at the Kress lunch counter. In less than 20 minutes they were arrested. Bond was set at the astronomical figure of $1,500 each. However, the money was promptly raised by the Negro community and the students were released. A mass meeting was held on campus at which students pledged support to the jailed sit-inners. The following day, nine more students engaged in sit-ins at Sitman's drugstore and at the Greyhound bus station. They remained in jail six days pending a court hearing and were released on bond April 4.

The day after the second arrest, 3,500 students marched through the center of town to the State Capitol, where we held an hour-long prayer meeting.

As chief speaker, I attacked segregation and discrimination not only here in Baton Rouge but in other parts of the country.

I was unaware that this speech would sever my connections with the university before the day was over. That afternoon, Dr. Clark returned from a conference in Washington and immediately cast his lot against the students. He summoned faculty members who were known to oppose the sit-ins and were furthest removed from really knowing the students. Immediately following this meeting, he announced the expulsion of 17 students, the 16 who had participated in the two sit-ins and myself.

Scene 2: The Campus

This suddenly shifted the focus of the Baton Rouge student protest from lunch counters to the university administration. As Marvin Robinson, participant in the first sit-in and president of the senior class told assembled students (see photo: Robinson is at center), we had a choice: *"Which is the more important; human dignity or the university? We feel it is human dignity."*

The students voted to boycott all classes until the 17 of us were reinstated. Lines were tightly drawn: the students on one side, the administration, faculty, State Board of Education, and a group of hand-picked alumni on the other. We 17 were no longer permitted on campus. But twice daily, in the morning and afternoon, we would address the students from the balcony of a 2-story house across a railroad track from the campus. By using a loudspeaker we were able to make ourselves heard by the large groups of students assembled on the campus-side of the track. This went on for two days.

Unable to get the students back to class, administration officials started calling their parents and telling them that the student leaders were inciting to riot. This move boomeranged: it caused many parents to fear for their sons' and daughters' safety to the extent of summoning them home. The administration countered by announcing that any student who wanted to withdraw from the university and go home could do so. Such a sizeable number of students applied at the registrar's office for withdrawal slips that the administration amended its ruling to the effect that these slips would have to be co-signed by parents.

Meanwhile, certain persons in the community and on campus moved to negotiate a settlement. They initiated several meetings with administration officials. Dr. Clark admitted to friends that he had acted in haste, but remained adamant in refusing to re-admit the 17 expelled students. Finally, he agreed to meet with eight of the student leaders. The meeting started at 5 P.M. on April 2 and lasted until 11:30. Throughout the 6½ hour meeting over 3,000 students sat in front of the building where the meeting was held. When the eight emerged, announced their decision to leave the university, but urged the other students to stay on and return to classes, there was an outcry. Some burst into tears, others shouted that they wanted to quit also. The student leaders reaffirmed their decision and gave assurance that they had reached it on their own after the administration had agreed not to dismiss anyone else.

Scene 3: The Following Morning

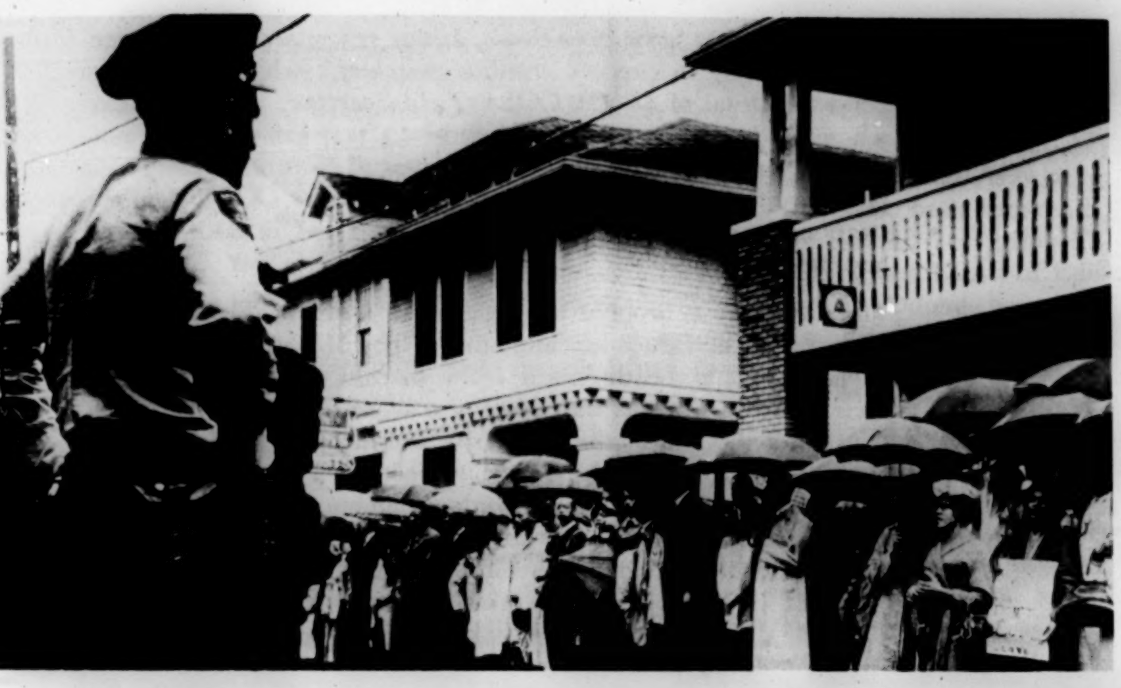
The administration broke its part of the agreement and expelled another student. The leaders thereupon called a meeting and urged that the students stay out of class. A local citizens' committee, which had raised bail bond money and had agreed to use some of it to help homegoing students pay their transportation, requested a meeting with Dr. Clark. The upshot was that the committee reversed itself and decided that money raised could be used only for bail bond and not for students' bus or rail fares home.

Jim McCain, CORE field secretary who had come to Baton Rouge to help us, tried to dissuade the committee from this decision, but without success.

"I tried my best to show them that helping the students to leave Southern, even if the university should close as a result, would strike a real blow at segregation," McCain said.

Withdrawal of the transportation funds was responsible for reducing considerably the total number of students who withdrew in protest. Nevertheless, the number who left on the weekend of April 2 was in the thousands. Of those, between 1,000 and 1,500 have not yet returned. As I write this, I do not know the exact number of students who permanently withdrew to protest an administration which serves segregation and discounts human dignity.

This protest action by students at Southern will long be remembered in Baton Rouge. One instructor died, another had a heart attack, and we are told that Dr. Clark is under medical care. It is reported by persons close to Dr. Clark that he has received several hundred letters and wires from all over the world — not one of them complimentary. Dr. Clark, I am sure, has lost many friends because of the position he has taken against his students. Until this protest, Southern University was an island unto itself. Dr. Clark was its president since 1938 and his father was its president from 1914 until 1938. Southern University will not be able to live by itself any longer. How far the community will proceed in continuing the movement which the students have started, only time will tell. But segregation in Baton Rouge has received a severe jolt.



ACT 2

★★★★★★★★★★★★★

BY RONNIE MOORE

DECEMBER, 1961. A second severe jolt to segregation in Baton Rouge came on December 11, 1961 when the U. S. Supreme Court reversed the convictions of sit-inners who had been arrested the previous spring. In a precedent-setting decision, the court held that peacefully seeking service at a lunch counter cannot be construed as "disorderly conduct."

Unimpressed by the Supreme Court decision, local lunch counter operators continued refusing to serve Negroes. On the day of the Supreme Court decision, Baton Rouge CORE led sit-ins at Kress's and McCrory's. Three days later, we conducted a mass picket demonstration at the stores and 23 were arrested, including CORE Field Secretary Dave Dennis.

Scene 1: Outside The Courthouse

In protest over these arrests, some 4,000 persons, most of us students from Southern University, assembled at the parish courthouse the next day. (see photo: at left is a policeman with a tear gas grenade hooked to his gun belt.)

Tear gas bombs and German Shepherd dogs were used to break up our peaceful and orderly demonstration. More than 43 shells of tear gas were hurled by police during three successive charges. The students tried to hold their ground, but finally were forced to retreat. Fifty were arrested that day, including myself. I was originally charged with *"annoyance"* and my bond put at $1,500.

Within minutes after my release, I was rearrested on a charge of *"conspiracy to commit criminal mischief,"* which raised my bond to a total of $3,500. CORE Field Secretary B. Elton Cox, whose ankle had been badly injured by a tear gas shell, was not arrested until that evening — on charges of *"conspiracy."* Temporary restraining orders prohibiting any further CORE demonstrations in Baton Rouge were promptly issued in both federal and state courts.

The day's arrests brought the total to 73 students. The all-white State Board of Education announced that any student arrested or jailed would be dismissed from the university. To express their concern, students that evening marched to the residence of Dr. Felton G. Clark, the university president. Dr. Clark came out and pledged that he would submit his resignation before he would suspend any of the student-demonstrators. He, thereupon, closed the university for Christmas holiday—four days ahead of schedule. Had Dr. Clark learned a lesson from the events of 1960? Subsequent events indicate that he had not.

Scene 2: Inside The Jail

Because of excessive bail, totaling $116,000, the students had to spend the Christmas holiday in the overcrowded, poorly-ventilated East Baton Rouge parish jail. Worried over Cox's ankle injury, I requested to see him. He was in solitary and on a fast. A guard answered my request with: *"Hell, no! I wish that m......f......would die!"* I finally got to see the sheriff and was allowed to talk to Cox.

I was less fortunate in my attempt to see a doctor, after traces of blood appeared in my saliva. After my third request, a guard pulled me by the shirt and slapped me in the face.

CORE Field Secretary Jerome Smith was hit on the neck with a judo chop by a guard for merely inquiring about his lost property receipt. When Dave Dennis sought to inquire about these two incidents of brutality, he was yanked out of the cell block by a guard, hurled against the bars and placed in solitary. After protests reached the outside, the local FBI questioned the guards, who, of course, denied having practiced any violence. The investigation ended there, except that Warden Edwards called us together and said: *"Lemme tell you one goddam thing. I runs this jail and no one is going to tell me to reprimand an officer. Furthermore, there's going to be no more damn singing, no more damn hunger strikes, and no more damn beating on walls."*

We did not have a very "Merry Christmas." By the end of the holidays, we were released. Assuming that Dr. Clark would keep his word about dismissals, we prepared to resume classes. However, following consultation between Dr. Clark, Superintendent Jackson of the State Board of Education and District Attorney Pitcher (who is chief legal advior of the Louisiana Association of the White Citizens Councils), a compromise had, apparently, been reached. Instead of all 73 student-demonstrators being dismissed, in accordance with the edict of the State Board of Education, only 7 leaders would be so-penalized. Among these seven was the entire leadership of our Baton Rouge CORE group, including me, the chairman, and Weldon Rougeau, the vice chairman. Despite his pledge of December 15, Dr. Clark approved this compromise which, itself, was later violated.

Scene 3: Dr. Clark's Residence

On January 17, about 1,000 students marched to his residence to ask for an explanation. For 12 long hours in freezing weather, we waited in vain, meditating and praying. At a special convocation the following day, Dr. Clark explained that he had not come out to address the students assembled at his residence because "*there can be no communication in a mob situation.*" He officially announced dismissal of the seven student leaders whom he characterized as "*vandals and anarchists.*" He also announced that the university was closing that same day, that each student would have to apply for re-admission and that none would be allowed to return to class until accepted by the university.

When I returned to campus with Rougeau that afternoon to get my dismissal letter and turn in my coupon book, we were both placed under arrest at the request of university officials for "*trespassing.*"

Scene 4: Inside The Jail

Our bail was set at $3,000 apiece. We were locked up together in an isolated cell. For 30 days we were denied mail and visiting privileges. On February 12, as CORE prepared to put up the bail, the charge against us was changed from "*trespassing*" to "*criminal anarchy*" which carries a maximum sentence of 10 years at hard labor. Specifically each of us is accused of being "*a member of the Congress of Racial Equality, an organization known to the offender to advocate, teach and practice opposition to the government of the State of Louisiana.*" My bail was increased to $12,500 and Rougeau's to $7,000. To raise this increased sum, it took CORE an additional month. We were released, finally on March 16, having served 56 days — which will not count on whatever prison sentence we may get.

Our trial is set, presently, for May 28. On one occasion District Attorney Pitcher told me he would accept a guilty plea on sedition, which carries a maximum of only five years instead of 10. Needless to say, I refused.

Cox, convicted of three misdemeanors, was sentenced on January 28 to 21 months in prison and a $5,700 fine. Through technicalities, the state delayed CORE's attempt to get him out, pending appeal. He was imprisoned from February 2 until March 26.

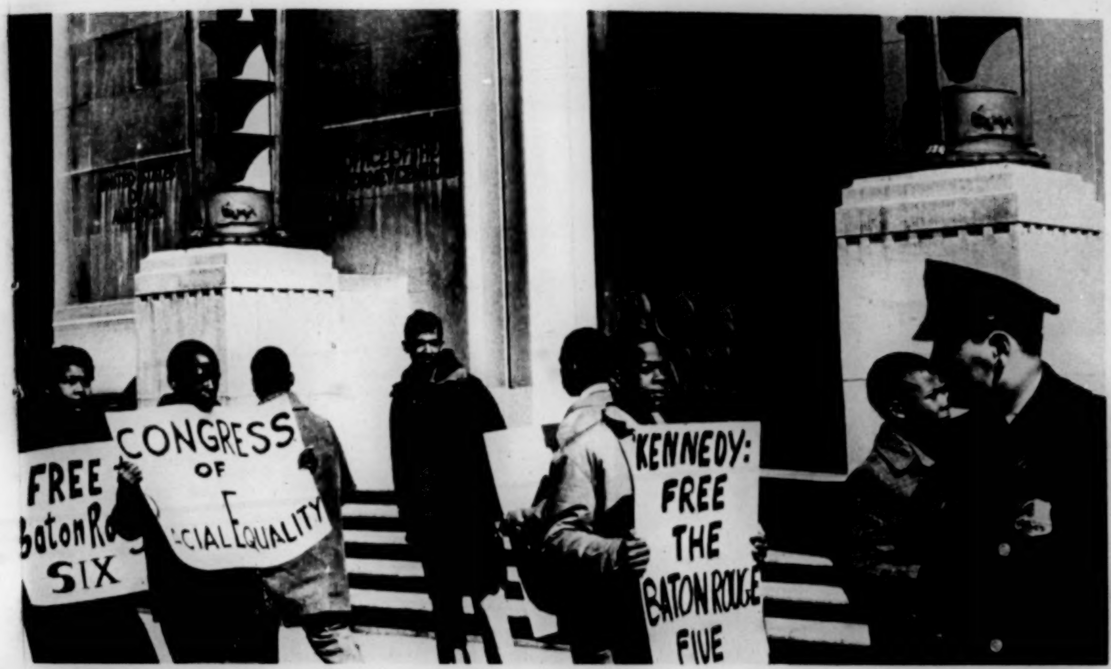
On February 1, Dion Diamond, field secretary of the Student Nonviolent Coordinating Committee, was arrested on the University campus for *"vagrancy."* The charge was later changed to *"criminal anarchy,"* as in our cases, and bail was set at $13,000. Seventeen days later, SNCC Chairman Charles McDew and SNCC field secretary Robert Zellner were arrested and charged with *"criminal anarchy"* simply for seeking to visit Diamond in jail. That brought the total accused of *"criminal anarchy"* to five.

A week after Dr. Clark had closed the university—it reopened for the spring semester, January 25, under state police guard. Despite the compromise that only seven student leaders would be dismissed, 40 additional students discovered that they had been refused re-admission because of their desegregation activities.

They decided to remain in Baton Rouge and work on voter registration. They have been conducting a daily door-to-door campaign to get the city's 28,000 unregistered Negroes to register and vote. CORE, with the aid of local churches, is providing their minimum living expenses.

"We regret the action which has been taken against Southern University students for their demonstrations," said a statement signed by 140 faculty members. *"We feel there is a need for constructive reappraisal of the present policy regarding student participation in such protest."*

However, no such *"constructive reppraisal"* is forthcoming from Dr. Clark. Just as in 1960, he has taken sides against his students and their efforts to make desegregation a reality. Right now, the university is quiet. Recently, a student led a protesting group to the dean's office. They were promised a juke box and a nationally known rock-and-roll singer for their dance. They dispersed and the student leader stood there with tears in his eyes. The final act of the Baton Rouge drama remains to be written.



ACT 3

★★★★★★★★★★★★★

Are Ronnie Moore, author of ACT 2, and the others accused of "*criminal anarchy*" going to spend long years in prison for merely advocating the principles of democracy for which we are supposed to stand? Or is Louisiana going to be made aware that it is part of a democratic country? The ending of this drama is, in a sense, up to all of us who are truly concerned. We must do all in our power to make the nation aware of what has happened in Baton Rouge. We must support CORE and other concerned organizations in their protest actions. (see photo: This protest took place March 17 in Washington, D.C.) Such actions already have brought results. As this pamphlet goes to press, the "*criminal anarchy*" charges have been dropped in the cases of two of the five students: Weldon Rougeau and Dion Diamond.

Regarding the accusations of "*criminal anarchy*," a March 16 New York Post editorial headed "*Louisiana Lunacy*," commented: "*One has to search the repressive codes of the most loathsome Communist and Fascist tyrannies to match Louisiana's latest device for trying to curb the integrationist movement. This is to charge active advocates of civil rights who run afoul of the law with* 'criminal anarchy.' "

edited by
JIM PECK

*

designed by
JERROLD GOLDMAN

*

published
APRIL, 1962
by

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CORE
RACIAL·EQUALITY

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NOTICE OF INTENTION TO APPLY FOR WRITS OF CERTIONARI, MANDAMUS AND PROHIBITION

STATE OF LOUISIANA	STATE OF LOUISIANA
VS. NO. 43-067	PARISH OF EAST BATON ROUGE
RONNIE M. MOORE	NINETEENTH JUDICIAL DISTRICT COURT

* *

TO THE HONORABLE FRED S. LE BLANC JUDGE OF THE NINETEENTH JUDICIAL DISTRICT COURT AND TO THE HONORABLE SARGENT PITCHER JR., DISTRICT ATTORNEY, NINETEENTH JUDICIAL DISTRICT COURT:

PLEASE be advised that RONNIE M. MOORE, defendant in the above styled and numbered cause, will make application to the Louisiana Supreme Court for Writs of Certionari, Mandamus and Prohibition to invoke the supervisory jurisdiction of said Supreme Court in order to review the sentence and conviction in the above styled and numbered cause.

Signed at Baton Rouge, Louisiana, on this ____day of April, 1962.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

2211 Dryades Street
New Orleans, Louisiana

MURPHY BELL
971 S. 13th Street
Baton Rouge, Louisiana

BY:________________________

OF COUNSEL

CARL RACHLIN, ESQ.
280 Broadway
New York, New York

BENJAMIN E. SMITH
Civic Center Bldg.
New Orleans, Louisiana

CERTIFICATE

I hereby certify that I have this date mailed the original of this Notice to the Honorable______________at his address in ____________Louisiana and that I have also mailed a copy of same to Hon. Sargent Pitcher at his address in ___________Louisiana.

Baton Rouge, Louisiana, this____day of April, 1962.

____

CORE
3-11d

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SUPREME COURT OF LOUISIANA

New Orleans

No. 46,930 **October 10, 1963**

State of Louisiana

v.

Ronnie M. Moore

- - - - - - - -

In re: Ronnie M. Moore applying for writs of mandamus, certiorari and prohibition

- - - - - - - -

Writ refused.

We find no error of law in the rulings of the District Court.

/s/ JWS

/s/ JBF

/s/ JBH

/s/ FWH

/s/ WBH

/s/ FWS

McCaleb, J., is of the opinion that writs should be granted.

- - - - - - - -

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
October 10, 1963

Harold A Maise, Jr.
Deputy Clerk

ORDER FOR APPEARANCE

Supreme Court of the United States

No. ______________, *October Term, 19* 63

RONNIE M. MOORE,

Petitioner,

vs.

STATE OF LOUISIANA,

Respondent.

The clerk will enter my appearance as Counsel for the Petitioner

Carl Rachlin

(Name) CARL RACHLIN

(Address) 280 Broadway

New York, N.Y., 10007

☛ NOTE.—Must be signed by a member of the Bar of the Supreme Court United States. Individual and not firm names must be signed. Type or print name under signature.

Form 73—10M—1-62

PLEASE COMPLETE FORM ON THE REVERSE SIDE

THE CLERK IS REQUESTED TO NOTIFY COUNSEL OF ACTION OF THE COURT BY MEANS OF:

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WHEN MORE THAN ONE ATTORNEY REPRESENTS A SINGLE PARTY OR GROUP OF PARTIES, COUNSEL SHOULD DESIGNATE A PARTICULAR INDIVIDUAL TO WHOM NOTIFICATION CAN BE SENT WITH THE UNDERSTANDING THAT IF OTHER COUNSEL SHOULD BE INFORMED HE WILL PERFORM THAT FUNCTION.

IN THIS CASE THE PERSON TO BE NOTIFIED FOR
( ) PETITIONER (S)
( ) RESPONDENT (S)
( ) APPELLANT (S)
( ) APPELLEE (S)
( ) AMICUS
IS:

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(Name)

____
(Street Address)

____
(City, State and Zone)

PLEASE PRINT REQUIRED INFORMATION

SUPREME COURT OF LOUISIANA

NUMBER ____________

STATE OF LOUISIANA, APPELLEE

versus

RONNIE M. MOORE, DEFENDANT - APPELLANT

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS, AND PROHIBITION,
INVOKING SUPERVISORY JURISDICTION OVER THE NINETEENTH JUDICIAL
DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA
HONORABLE FRED S. LE BLANC, JUDGE, PRESIDING.

* *

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF LOUISIANA:

The petition of the State of Louisiana on the relation of RONNIE M. MOORE, the defendant and appellant herein, applying for Writs of Mandamus, Certiorari and Prohibition, and invoking the general supervisory jurisdiction of the Honorable Supreme Court of the State of Louisiana over the Honorable The Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, respectfully represents:

1.

That the jurisdiction of the Honorable Supreme Court of the State of Louisiana is invoked under Article Seven, Section Ten of the Constitution of the State of Louisiana and in accordance with rule XII of the rules of the Supreme Court of the State of Louisiana.

2.

That this is an unappealable case, the same being a misdemeanor in which the fine imposed upon defendant was less than three hundred and no/100 ($300.00) dollars and the imprisonment was not more than six months.

3.

That the defendant, the appellant herein, was charged in a Bill of Information filed in the Honorable Nineteenth Judicial District Court with the unlawful violation of an ordinance of the Police Jury of EAst Baton Rouge Parish, Louisiana as set forth in the said Bill of Information, a certified copy of which is annexed hereto and made part hereof as if written herein.

4.

That a certified copy of the ordinance of the Policy Jury of the Parish of East Baton Rouge, Louisiana is annexed hereto and made part hereof as if written herein.

5.

That defendant withdrawing his pleas of not guilty for the purpose of filing an Application For A Bill of Particulars, filed said Application, requesting information he thought necessary to adequately defend himself. A certified copy of the Application for a Bill of Particulars is annexed hereto and made part hereof as if written herein. The Application was argued, submitted and overruled whereupon timely objection was made and a formal Bill of Exception was reserved.

6.

That defendant withdrawing his plea of not guilty for the purpose of filing a Motion to Quash, filed said Motion which was argued, submitted and overruled whereupon timely objection was made and a formal Bill of Exception was reserved. A copy of the Motion to Quash is made a part hereof.

7.

That this case was called for trial on April 10th 1962 before his Honor Judge Fred S. LeBlanc at which time counsel for defendant filed a written Motion requesting that the Honorable Court order said courtroom desegregated. The motion was overruled and counsel timely objected reserving a Bill of Exceptions.

8.

That immediately before adjournment of court on April 10th 1962 counsel for defendant moved to file an affidavit in the record which affidavit related to an incident occurring immediately before court started and further related to a negro spectator being directed by one of the courts attachés from the white spectator section to the negro spectator section. The state objected to the filing of said affidavit which objection was sustained and counsel for the defense timely reserved a Bill of Exceptions to the ruling of the court.

9.

That at the close of defendant's case the Honorable Court found defendant guilty as charged at which time counsel for defendant objected to the verdict of the court and timely reserved a Bill of Exceptions thereto.

10.

That defendant filed a Motion in Arrest of Judgement and a Motion For A New

Trial on April 12, 1962 which were argued, submitted and overruled on April 16, 1962. Counsel for accused timely reserved a formal Bill of Exceptions to the overruling of the Motion in Arrest of Judgment and the overruling of the Motion For A New Trial. Copies of both motions are attached hereto and made a part hereof.

11.

That on April 24th 1962, defendant was sentenced to pay a fine of $50.00 and costs or in default of payment thereof to be confined in the Parish Jail for thirty days, and in addition thereto to be confined in the Parish Jail for thirty days to which sentence counsel for accused objected reserving a formal bill of Exceptions. At this time counsel for the accused indicated to the court that he would like to renew his intention to file an application in the Louisiana State Supreme Court for Writs of Certiorari, Mandamus and Prohibition. The court granted accused sixty days in which to apply to the Supreme Court for Writs, and fixed bond in the sum of Five Hundred and NO/100 ($500.00) Dollars conditioned upon the final decision of the Supreme Court in this matter.

12.

That during the trial of this matter Sergeant E. H. McCormick, a witness for the state was asked on direct examination (transcript page 35 last question on the page) what was coming from the loud speaker, to which question the witness answered, "talking". Counsel for the accused objected to the question on the grounds that any testimony about what emanated from the loud speaker other than music was irrelevant as being beyond the scope of the statute. The court overruled the objection (transcript page 37) stating "...the ordinance covers not only the playing of music, prohibits the playing of music, prohibits the playing of certain types of music, it exempts playing of other types of music, but that is not the exclusive purpose of the ordinance, and the ordinance covers, noises, loudspeaking, and so forth." Counsel then reserved a Bill of Exceptions.

13.

That during the trial of this matter Deputy Sheriff A. L. McCoy, a witness for the state was asked on direct examination (transcript page 60) "did you ever/hear anything coming from the loud speakers", to which he answered in part that he heard loud noises. Counsel objected on the grounds that the question required answers which went beyond the scope of the statute and requested that this objection be made general to this line of questioning. The court ordered that this objection be made general.

14.

That during the trial of this matter Deputy Sheriff A. L. McCoy, a witness for the state, on direct examination in response to one of the questions (transcript page 65) testified as to the number of students gathering in the streets. The defense reserved a Bill of Exceptions.

15.

That during the second day of the trial, April 11th 1962, Captain Tom Henderson, a witness for the state was asked to read (transcript pages 150 thru 158) from several sheets of paper what allegedly was the speech given by the defendant over the loud speaker. Counsel for the accused objected to the reading and reserved a Bill of Exceptions to the ruling of the court.

16.

That during the second day of the trial, April 11th 1962, the District Attorney offered into evidence (transcript pages 203 thru 208) papers alleged to have been the text from which the defendant read a speech over the loudspeaker. Counsel objected on the grounds that a proper foundation had not been made; that the speech was irrelevant as going beyond the scope of the statute and that defendant was not on trial for a violation of a law proscribing the contents of the speech. The objection was overruled and counsel reserved a Bill thereto.

17.

That at the close of the state's case counsel moved for a directed verdict of acquittal which was overruled. Counsel objected reserving a Bill of Exceptions thereto.

18.

That the court erred in:

1) Denying the Application for a Bill of Particulars.
2) Denying the Motion to Quash
3) Denying the Motion to Desegregate the Courtroom
4) Denying the request to file an affidavit in connection with the motion to Desegregate the Courtroom
5) Denying the motion for a directed verdict of acquittal
6) Denying the Motion in Arrest of Judgment
7) Denying the Motion for a New Trial
8) Finding the defendant guilty
9) Permitting the pleadings to be enlarged so as to admit testimony relative to "speaking" or "talking" over the loudspeaker
10) Permitting the pleadings to be enlarged so as to admit testimony relative to the number of students gathered near the loudspeaker.
11) Permitting the introduction into evidence papers from which the alleged speech was made.
12) Permitting testimony relative to alleged admissions made by defendant. To all of which the defendants timely and duly excepted and reserved a formal Bill of Exception.

That the defendants have exhausted all of their remedies in the court of original jurisdiction and no appeal lies from the verdict and sentence imposed, hence relief is requested of this Honorable Court.

WHEREFORE, appellants pray that this Application for Writs of Mandamus, Certiorari and Prohibition be granted and for all orders necessary and for general and equitable relief.

ROBERT F. COLLINS
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234 Loyola Avenue
New Orleans, Louisiana

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared:

NILS R. DOUGLAS

who after being first by me duly sworn, said:

That he is one of the attorneys for RONNIE M. MOORE, defendant and appellant in the above and foregoing petition or application; that he has read same and that all of the allegations of fact therein contained are true and correct to the best of his knowledge, information and belief; that notice of defendant's intention to apply to the Supreme Court of the State of Louisiana for Writs of Mandamus, Certiorari and Prohibition was given in open court and that defendant has since filed such notice in writing in open court Judge Fred S. LeBlanc, presiding, and that a copy of the above and foregoing petition has been mailed by United States mail, postage prepaid to the Honorable Fred S. LeBlanc, Judge Nineteenth Judicial District Court, Parish of East Baton Rouge, Louisiana and to the Honorable Sargent Pitcher Jr., District Attorney, Parish of East Baton Rouge, Louisiana.

____
NILS R. DOUGLAS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS ____ DAY
OF __________, 1962

NOTARY PUBLIC

STATEMENT OF FACTS

On December 15, 1961 at about 11:00 o'clock A.M., the defendant RONNIE M. MOORE and four other Negroes, who were in a 1955 Red Pontiac fixed with a portable loudspeaker on top and bearing a Kansas license plate were arrested. Defendants were arrested in a predominately business district in the parish of East Baton Rouge about 1 mile beyond the city limits of the City of Baton Rouge. More particularly the defendant was arrested about one block away from the intersection of U. S. Highway 61 and Louisiana Highway 19 not far from Southern University.

Defendant, RONNIE M. MOORE the only person on trial, was arrested for violation of an ordinance of the Police Jury of East Baton Rouge Parish by operating and permitting the operatinn of a mechanical contrivance and device to which loud speakers were attached in such a manner as to be a nuisance to the neighborhood.

Defendant was arrested pursuant to an order given by Captain Tom Henderson over the police radio. Said order was that if the subjects turn the loud speaker on again they were to be arrested. This order was given in spite of the fact that there were no complaints from members of the community where the students, variously estimated at 500 to 1,000, had congregated. At the time of the arrest of the defendant he was engaged in giving a speech against segregation.

STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction of this matter by virtue of article VII; section 2, of the Louisiana Constitution (1921) wherein it is provided:

> "The Supreme Court, the court of appeal, and each of the judges thereof, subject to review by the court of which he is a member, and each District Judge throughout the state including Judges of the Civil and Criminal District Courts in the Parish of Orleans, may issue Writs of Habeas Corpus, in behalf of any person in actual sustody in cases within their respective jurisdictions; and may also, in aid of their respective jurisdictions, original, appellate, or supervisory, issue Writs of Mandamus, Certiorari, Prohibition, Quo Warranto, and all other needful writs, orders and process, and where any of said writs are refused, the appellate courts shall indicate the reasons therefor".

The Criminal District Court for the Parish of East Baton Rouge, Louisiana, in matter number 43,067 sentenced the defendant to pay a fine of Fifty ($50.00) Dollars and costs, or in default of payment thereof to be confined in the Parish Jail for thirty days, and in addition thereto to be confined in the Parish Jail for thirty days.

ASSIGNMENT OF ERRORS

1) The courts action in refusing to desegregate the court room constituted state action in violation of the equal protection AND DUE PROCESS clauses of the XIV Amendment to the Constitution of the United States.

2) The ordinance under which the prosecution is based and the Bill of Information founded thereon is unconstitutional in that it is in violation of Section 9 Article 1 of the Louisiana Constitution of 1921 and is unconstitutional in that it is in violation of the Sixth Amendment of the Constitution of the United States for the reason that the defendant has not been informed of the nature and cause of the accusation.

3) The East Baton Rouge Parish Ordinance as applied and the arrest and conviction of the defendant denied him freedom of speech that is guaranteed under the first and fourteenth amendments to the United States Constitution.

4) Segregation in the court room violated the constitutionally protected rights of the spectators and defendant has standing to assert those rights.

THE COURTS ACTION IN REFUSING TO DESEGREGATE THE COURTROOM CONSTITUTED STATE ACTION IN VIOLATION OF DUE PROCESS AND THE EQUAL PROTECTION CLAUSES OF THE XIV AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Your relator maintains that the failure of the District Court to order the courtroom desegregated as requested in the written motion constituted state action within the prohibition of the XIV Amendment to the Constitution of the United States.

Section one of the Fourteenth Amendment to the Constitution of the United States reads in part:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens, of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

An early case to interpret what constituted state action was *Virginia* v. *Rives*, 100 U.S. 313, 25 L.Ed. 667 (1880). The state court there denied defendants motion that the venire from which the jury would be selected be composed of one-third Negroes. In removal proceedings to the federal court the federal court denied relief on a procedural defect but also held:

> "...it is doubtless true that a state may act through different agencies - either by its legislative, its executive, or its judicial authorities; and the prohibitions of the amendment extend to all action of the state denying equal protection of the laws, whether it be action by one of these agencies or by another".
> 100 U.S. at 318.

The United States Supreme Court in *Carter* v. *Texas*, 177 U.S. 442, 20 S. Ct. 687, 44 L.Ed. 839 (1900) with reference to state action by courts in excluding Negroes from juries said:

> "Wherever by any action of a state, whether through its legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded solely because of their race or color, from serving as grand jurors in the Criminal Prosecution of a person of the African race, the equal protection of the laws is denied him, contrary to the Fourteenth Amendment to the Constitution of the United States".
> 177 U.S. at 447.

The Supreme Court, from *Strauder* v. *West Virginia*, 100 U.S. 303 (1879) at 100 U.S. 308, through Brown v. Board of Education 347 U.S. 483, 487 (1954), and thereafter, has recognized that segregation of the races imposes a status of inferiority upon Negroes. In the case at bar, the segregation of the courtroom, under the aegis of the judiciary itself, was a continuing testimonial by the state that the two races were unequal. As was noted in **Brown,** supra, the impact of segregation is greater when it is officially sanctioned by law.

Shelley V. Kraemer, 334 U.S. 1,68 S. Ct. 836, 92 L.Ed. 1161 (1948), in which the Supreme Court of Missouri held that judicial enforcement of racial restrictive covenants in a contract did not violate the Fourteenth Amendment was reversed on the grounds that said enforcement was state action within the prohibition of said amendment.

It is to be noted that the Kraemer case prohibits state enforcement of private discrimination but the instant case involves state enforcement of state discrimination. How can this be? This is state discrimination because the people of the state assist the state in discrimination in this instance by participation and acceptance of the acknowledged custom of segregated seating facilities, a court room. Put another way the parties in charge of this public court room in conjunction with the people who use said facilities acquiesce in the Southern custom of segregation; this constitutes state segregation or state discrimination. When an official of the state, a District Court Judge, refuses to order desegregation of said courtroom said refusal constitutes state enforcement of state discrimination. Thus the prohibition in the Kraemer case is of greater strength here for if it is unconstitutional for a state to enforce private discrimination for a stronger reason the state is prohibited from enforcing state discrimination.

The relator herein was prejudiced by the refusal to desegregate the courtroom because the effect was to say, you are not entitled, you have no right to have persons of your race sit where they choose in this court. If this be true then now can it be said, especially in criminal cases, that your relator had all of his rights secured to him? How can it be said objectively; that he received the benefit of the presumption of innocence; that the state proved beyond a reasonable doubt the guilt of accused; that the ordinance in question was strictly construed; that the Negroes who testified in relators behalf were given a reasonable amount of credence in spite of the fact that they were required then and for years past had been required to accept ~~specified to accept specified~~ seating facilities.

The answer is there is a reasonable doubt that if the forms of justice are not met with then the substance is also not met with for the one precedes the other. The aforementioned rights of a defendant are theoretically secured to him because of his dignity as a human being. If his dignity is bismirched by segregated seating, a denial of a lesser right, how can it be said that his greater rights are secured? The above answer bears an even stronger force when the accused is on e who at the time of his arrest was speaking out against segregation.

The policy of the State of Louisiana with reference to segregation is amply demonstrated by the fact that in addition to state statutes requiring segregation in specific situations the Louisiana Legislature in 1960 adopted the following preface to a joint resolution concerning the possible integration of any tax supported facility in the state.

> "Whereas, Louisiana has always maintained a policy of segregation of the races, and "whereas, it is the intention of the citizens of this sovereign state that such a policy be continued...." (Art. No. 630 of 1960, to amend article X of the Louisiana Constitution).

The defects urged herein were also urged at Article 2 of the Motion For A New Trial which was overruled and to which ruling a formal Bill of Exceptions was reserved.

The defects urged herein were urged at Article 5 of the Motion in Arrest of Judgment which was overruled and to which ruling a formal bill of Exceptions was reserved.

THE ORDINANCE UNDER WHICH THE PROSECUTION IS BASED AND THE BILL OF INFORMATION FOUNDED THEREON IS UNCONSTITUTIONAL IN THAT IT IS IN VIOLATION OF SECTION 9 ARTICLE I OF THE LOUISIANA CONSTITUTION OF 1921 AND IS UNCONSTITUTIONAL IN THAT IT IS IN VIOLATION OF THE SIXTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES FOR THE REASON THAT THE DEFENDANT HAS NOT BEEN INFORMED OF THE NATURE AND THE CAUSE OF THE ACCUSATION.

The Bill of Information is insufficient to properly inform the accused of the offense with which he is charged in that it states nothing more than a conclusion of law without any facts or circumstances upon which such a conclusion could be based.

This is particularly true because the ordinance invoked says it is unlawful "...to play, operate, or permit the playing or operation of phonographs, radios, bands, or any other mechanical contrivance or device which have loudspeakers attached thereto, in such a manner as to be a nuisance to the neighborhood, it being the purpose of this ordinance not (sic) interfere with the legitimate (sic) and orderly playing of music but to prohibit the playing of such music in a manner calculated to disturb the peace and quiet of the neighborhood" (underscoring ours)

The bill of Information says"...unlawfully did violate an ordinance of the Police Jury of East Baton Rouge Parish, Louisiana in that he did operate and permit the operation of a mechanical contrivance and device to which loud speakers were attached in such a manner as to be a nuisance to the neighborborhood". (underscoring ours)

A cursory examination shows that the Bill of Information does not track the ordinance; does not refer to it by name or number; and does not use words conveying the unequivocal meaning of the ordinance.

Further examination shows that at a critical point in the Bill of Information a confusion exists because the civil law term nuisance is used whereas the ordinance uses the criminal law term disturbing the peace and quiet of the neighborhood and also the civil law term nuisance.

The bill of information says the defendant actually created a nuisance (assuming the use of said term to be correct). The bill says "...in such a manner as to be a nuisance to the neighborhood." The ordinance says"... in a manner calculated to disturb the peace". Thus we see that the state should have proved not that defendant calculated to disturb the peace but he did in fact disturb the peace.

Even if the words of the Bill of Information did track the ordinance in question we maintain that the ordinance itself does not set forth the elements necessary to constitute the offense intended to be punished. This ordinance does not sufficiently describe nor legally characterize the offense denounced.

The case of *State* v. *Blanchard* 226 La. 1082, 78 So. 2d 181 (1955) is on all fours with the instant case. There writs were granted and made peremptory because the Bill of Information was fatally defective. The defendants in the *Blanchard case*, supra were convicted and sentenced under a Bill of Information charging that they:

> "Unlawfully possessed a mechanically and/or manually operated device, without explosive, for the purpose of illegally taking commercial fish; in violation of the provisions of (LSA-) R.S. 56:366 of the State of Louisiana, as amended by Art. 194 of 1952".

The court said there:

> "...where a statute characterizes the offense in general or generic terms an information charging an offense in the words of the statute is insufficient and the specific facts on which the charge is based must be set out in the information".

The court cited approvingly *State* v. *Varnado*, on rehearing, 208 La. 319, 368, 23 So. 2d. 106 and *State* v. *Holmes*, 223 La. 397, 65 So. 2d 890; United States v. Cruikshank, 92 U.S. 542, 23 L.Ed. 588.

We maintain that the ordinance sets out the offense in general and generic terms and that the ordinance itself uses a contradiction of generic terms first referring to nuisance and then to disturbing the peace and quiet of the neighborhood. Even assuming the conflict to be resolved in favor of the state the Bill of Information is fatally defective because it does not set out the specified facts on which the charge is based. What was the nuisance for which the defendant was convicted?

The test of a valid bill of Information is given in *United States* v. *Cruikshank*, supra, as follows:

> "The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defense, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. *For this, facts are to be stated*, not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment with reasonable particularity of time, place and circumstances".
> (underscoring ours)

Further authority for the proposition that the Bill of Information is fatally defective is State v. Varnado, supra, on rehearing. It says quoting 27 Am. Jur. 662, Section 103:

> "It is the modern rule, universally applied by the courts, that incharging a statutory offense it is not necessary to use the exact words of the statute. An indictment or information for such an offense is sufficient if it follows the language of the statute substantially or charges the offense in equivalent words or others of the same import, if the defendant is thereby fully informed of the particular offense charged, and the court is enabled to see therefrom on what statute the charge is founded...."
>
> "The general rule...is without application where the statutory words do not in themselves fully, directly and expressly, without uncertainty or ambiguity, set forth all the elements and ingredients necessary to constitute the offense intended to be punished. Asthe courts have pointed out, the words of the statute may be sufficient to describe or legally characterize the offense denounded, and yet be wholly insufficient to inform the accused of the specific offense of which he is accused so as to enable him to prepare his defense or plead his conviction or acquittal as a bar to further prosecution for the same offense, as where the statute characterizes the offense in mere general or generic terms...an information charging an offense in the words of a statute which defines an offense generally is insufficient where it alleges the offense in the language of the statute, but does not state the specific acts on which the charge is based, and is not sufficiently definite to be of any value as a bar to further prosecution. In order to particularize the offense it is necessary in some instances, in addition to the statutory words of general description, to set forth the things or means used or other statements of facts and circumstances, as with respect to time, place, person, or other circumstances to identify the particular transaction...."

The District Court was of the opinion that the ordinance covered noises other than those proscribed in the statute (transcript pages 37,40,67,135 and 220). However the courts statement at page 67 of the transcript is manifest proof that the Bill of Information is defective in not putting the defendant on notice as to what constituted the particular nuisance or what constituted the disturbing of the peace.

The court at transcript page 67 says:

> "...the ordinance is broad enough, to cover any kind of nuisance whether it is distasteful music or whether it is a speech of a provocative nature...nuisance is a pretty broad term, and my examples are not restrictive, I think I could think of quite a few more".

A Bill of Exceptions was taken to the courts ruling in this particular instance. From what the District Court said above the conclusion is inescapable that the defendant did not know and could not know what nuisance he was supposed to have created.

The purpose clause of the ordinance states:

> "...it being the purpose of this ordinance not (sic) interfere with the legitimate (sic) and orderly playing of music, but to prohibit the playing of such music in a manner calculated to disturb the peace and quiet of the neighborhood".

The purpose clause sets the limits of the intent of the Police Jury. The clause states positively what is intended to be proscribed. The clause states negatively what is intended to be excluded. Only by torturing the words and intent of the ordinance can it be applied to the facts herein. It says what it attempts to proscribe and it says what it attempts to exclude.

The Bill of Information is fatally defective because it does not negative, the fact that Scotlandville is not a municipality within the parish of East Baton Rouge. The importance of this failure on the part of the state is that the ordinance excludes from its effects those offenses which occur within a municipality. The failure of the state to allege or prove that this offense happened outside of a municipality within the Parish of East Baton Rouge rendered the conviction herein fatally defective.

The defense feels as in Thompson v. City of Louisville, 362 U.S. 199, 80 S. Ct. 624, 4 L. Ed. 2d 654 that the record in this case is entirely devoid of evidentiary support as to render the conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment.

Further, the evidentiary test propounded by Justice Frankfurter in Garner v. State of Louisiana 82 S. Ct. 248 (1961) was not met by the prosecution. Justice Frankfurters test says:

> "Assuming for present purposes the constitutionality of a statute prohibiting non-violent activity that tends to provoke public alarm or disturbance, such a tendency, as a crucial element of a criminal offense, must be estalished by evidence disclosed in the record to sustain a conviction...'knowledge by notoriety', to use Dean Wigmores phrase, IX Evidence Section 2569 (Third ed. 1940), not presented as part of the prosecutions case capable of being met by a defendant, is not an adequate basis, as a matter of due process, to establish an essential element of what is punished as crime...."
>
> "It may be unnecessary to require formal proof, even as to an issue crucial in determining guilt in a criminal prosecution of what is incontestably obvious. But some showing cannot be dispensed with when an inference is at all doubtful. And it begs the whole question on the answer to which the validity of these convictions turn to assume that the "public" tended

> to be alarmed by the conduct of the petitioners here disclosed...conviction under this Louisiana Statute cannot be sustained by reliance merely upon likely consequences in the generality of cases. Since particular persons are being sent to jail for conduct allegedly having a particular effect or a particular occassion under particular circumstances, it becomes necessary to apprise that conduct and effect by the particularity of evidence adduced.

The defects of the Bill of Information were urged in Articles 2 and 3 of the Motion to Quash, which was overruled and a formal Bill of Exceptions was reserved by counsel for defendant.

The defects of the Bill of Information were urged in Articles 1,2,3, and 7 of the Motion in Arrest of Judgment, which was overruled and a formal Bill of Exceptions was reserved by counsel for defendant.

THE EAST BATON ROUGE PARISH ORDINANCE AS APPLIED AND THE ARREST AND CONVICTION OF THE DEFENDANT DENIED HIM FREEDOM OF SPEECH THAT IS GUARANTEED UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

By way of definition of standards the following quote from Cantwell v. Conn. 310 U.S. 296, 84 L.Ed. 1213, 128 A.L.R. 1352, 60S. Ct. 900 (1940) gives a portion of relator's position:

> "No one would contest the proposition that a state may not by statute wholly deny the right to preach or to disseminate religious views. Plainly such a previous and absolute restraint would violate the terms of the guarantee. It is equally clear that a state may by general non-discriminatory legislation regulate the times, places, and the manner of soliciting upon its streets and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community without invading the liberties protected by the fourteenth amendment".

Thus we are forced to conclude that the rights of citizens to freedom of speech and assembly are not absolute nor is the right of the state to legislate on speech and assembly absolute. The general question then; is where does an individuals freedom end and where does the states power begin? Or put another way, how can one reconcile liberty and order?

It should be noted here that it is obvious that if there are certain restraints placed on legislation directly and expressly limiting the freedom of speech then, for a greater reason, these restraints must come in to play in a situation, such as the instant case, where only through a torturing of the words of the ordinance can it be said that your relator has violated same.

To further define the standard and show the reconciliation between liberty and order reference is made to Seller v. Johnson 163 F 2d 877 (8th Cir. 1947) cert. denied 332 U.S. 851 (1948). There the Jehovah's witnesses planned a series of four Sunday Meetings in the Lacona City Park. The speaker at the first meeting was harassed and interfered with, but succeeded in delivering his bible lecture. At the second meeting, there were numerous fist fights, etc. The mayor prohibited the third meeting and the sheriff with the assistance of about 100 special deputies blockaded the city against the Jehovah's witnesses. The witnesses then filed suit in federal court under the Civil Rights Act of 1871 to enoin the interference with their contemplated meeting. The requested relief was granted. The court pointed out that the 100 persons deputized to blockade the highways could have been utilized to preserve order at the park. The court said:

> "To secure the rights of free speech and assembly against abridgment, it is essential not to yield to threats of disorders. Otherwise these rights of the people to meet

> and of speakers to address the citizens could not merely be abridged but could be destroyed by action of a small minority of persons hostile to the speaker or the views he would be likely to express".

Another case showing the reconciliation of free speech and assembly to the states power to regulate same is a Louisiana State Supreme Court case State v. Sanford 203 La. 961 14 So. 2d 778. This case held that where approximately 30 members of the Jehovah's witness sect proceeded peacefully down the crowded main street of a town, stopping persons, handing out tracts and requesting subscriptions and donations after having been warned by the mayor and chief of police not to do so, were not guilty of a breach of the peace. The court in the Sanford case said:

> "The mayor and chief of police had no legal right to insist that these defendants forego either their religious belief and works or remain away from the town as long as they conducted themselves in a lawful and orderly manner".

Its significant to note that both Cantwell V Conn, supra and Thelma Martin v. City of Struthers, 63 S. Ct. 862 were cited by the Louisiana State Supreme Court in the Sanford case.

It will be seenthat the ordinance invoked herein does not prohibit speeches. Yet the transcript shows that:

> Deputy Sheriff R. L. Raburn one of the arresting officers testified at page 110 of the transcript, "well; it sounded like music. It could have been talking but I believe it was music".
>
> Deputy Sheriff B. B. Pate, one of the arresting officers testified at page 90 of the transcript, "I heard instructions - - I don't remember the exact words. That was December 15".
>
> Captain Tom Henderson, senior officer at the incident who testified at page 182 of the transcript, "there wasmmusic and there were voices, there was speeching".

The following quote from Thomas v. Collins 323 U.S. 516, 89 L. Ed. 430, 65 S. Ct. 315 shows us the test to be applied in the instant case:

> "Where the line shall be placed in a particular application rests not on...generalities, but on the concrete clash of particular interests and the communities relative evaluation both of them and of how the one will be affected by the specific restriction, the other by its absence. That judgment in the first instance is for the legislative body. But in our system where the line can constitutionally be place presents a question this court cannot escape answering independantly, whatever the legislative judgment, in the light of our constitutional tradition. And that tradition can be affirmative, to support an intrusion upon this domain, onlyif grave and impending public danger requires this".

Further on the court says:

> "This court should recognize that in the circumstances of our times the dissemination of information concerning the facts of a social dispute must be regarded as within that area of free discussion that is guaranteed by the constitution".

The point is, as between freedom of speech and loud noises assuming that it was a nuisance, the interest of the community as a whole is better served through the yielding of the latter to the preferred constitutional posi granted free speech.

The principle relied on by relator is, there shall be no previous restraint on the right to free speech and assembly. The exception to this rule is the clear and present danger theory. We feel that the facts of the instant case do no warrant the use of the exception. The ordinance is imperfectly applied in the instant case must fail because nowhere is it shown or proven in its case that there was an immediate and irreparable harm which the community would have suffered had not defendant been arrested. We are not confronted here with a situation here as existed in Feiner v. New York, 340 U.S. 315 (1951)

The violations of free speech herein urged were also urged at Article 6 of the Motion to Quash which was overruled and to which ruling a formal bill of Exceptions was reserved.

The violations of free speech herein urged were also urged at Article 5 of the Motion in Arrest of Judgment, which was overruled and to which ruling counsel reserved a formal Bill of Exceptions.

SEGREGATION IN THE COURTROOM VIOLATED THE CONSTITUTIONALLY PROTECTED RIGHTS OF THE SPECTATORS, AND DEFENDANT HAS STANDING TO ASSERT THOSE RIGHTS.

A. The Spectators had a right protected by the Fourteenth Amendment to sit anywhere in the courtroom.

The segregated courtroom in this case was beyond question maintained through state action. The lesson of the many Supreme Court and other appellate court cases dealing with the Fourteenth Amendment, particularly since *Brown* v. *Board of Education*, 347 U.S. 483, 487 (1954), is that any state-sanctioned segregation by race *per se* violates the equal protection clause of the Fourteenth Amendment by denying Negroes equal protection of the law and by depriving them of the full benefits of first-class citizenship.[1] If a suit were brought by a spectator denied the right to sit anywhere in a courtroom, it is unlikely that the court which decided in the *Brown* case that a Negro could partake of the state's educational system on an equal footing with whites, would rule that he could not take part in the judicial process of the State in the same manner. It is also unlikely that if such a suit were brought, the court which decided that Negroes have a right to eat in a courthouse dining room would hold that those same Negroes could not use the same washrooms or sit in the same areas of the courtroom as members of a different race. See *Derrington*, 240 F 2d 922 (5th Cir. 1956). At this late date, after the rash of municipal golf course, bus line, air terminal, parks and other cases, there can be no doubtthat a Negro has a right to sit anywhere in a state courtroom and this right cannot be denied to him by the presiding judge. In fact, *Derrington* means that the judge cannot acquiesce in the face of *de facto* segregation, but has an affirmative duty by reason of the Federal Constitution to insure that his courtroom is properly open to all.

B. Appellant has standing to enforce the rights of the spectator.

Although the general rule states that one may not raise the constitutional rights of another, exceptions to that rule are made in appropriate cases. Most clearly in point is *Barrows* v. *Jackson*, 346 U.S. 249 (1953) where a landowner who violated a restrictive racial covenant by selling to a Negro did not have to respond in damages to the obligee because to allow recovery of damages, would curtail the constitutional rights of Negroes as enunciated in Shelley v. Kraemer, 334 U.S. 1 (1948). In other words, Negroes have a right to purchase land from sellers who are violating restrictive racial covenants previously entered into, and that right includes immunity from suit for either specific performance or damages against the seller by the other parties to the covenant. And that right of the Negro purchaser may be raised by the covenantors in suits where Negroes are not parties.

---

[1] *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961). See also *Boynton* v. *Virginia*, 364 U.S. 454 (1961).

In Barrows, the court stated the general rule that one may not raise the constitutional rights of others and noted that the Supreme Court ordinarily added to that rule its own rule of judicial self-restraint, citing Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 346, 348 (1934) (concurring opinion).

> "This is a salutary rule, the validity of which we affirm. But in the instant case, we are faced with a unique situation in which it is action of the state court which might result in a denial of constitutional rights and in which it would be difficult, if not impossible for the persons whose rights are asserted to present their grievances before any court. Under the peculiar circumstances of this case, we believe the reasons which underly our rule denying standing to raise another's rights, which is only a rule of practice, are outweighed by the need to protect the fundamental rights which would be denied by permitting the damages action to be maintained. At page 257 (emphasis in original).

Relaxation of that salutary rule, a rule only of practice, is also appropriate here. In both cases, defendants had much at stake and were asserting the constitutional rights of others to protect their own rights and interests. The state in Barrows was estopped from taking affirmative action that would infringe the rights of Negroes to the prejudice of the defendant. The same should be done here. Just as the defendant in Barrows raised these claim to defeat a suit for damages, appellant here is seeking only the fair and public trial to which he is entitled, and which the State is attempting to deny him. Furthermore, both are cases with distinct racial overtones in which the constitutional rights being enforced are equally clear and equally serious. Segregation within the halls of justice mocks the judicial process and the entire trend of current Supreme Court opinion. This court should allow appellant to raise the constitutional right of the Negro spectators to sit anywhere in the courtroom, and by so doing, close the gap of impermissible discrimination.

The defects urged herein with relation to the lack of a fair trial were urged at Article 5 of the Motion in Arrest of Judgment which was overruled and to which ruling a formal Bill of Exceptions was reserved.

The defects urged herein with relation to the lack of a fair trial were urged at Article 2 of the Motion For A New Trial which was overruled and to which ruling a formal Bill of Exceptions was reserved.

PASSED: October 8, 1934

ORDINANCE

BE IT ORDAINED BY THE POLICE JURY OF THE PARISH OF EAST BATON ROUGE, in regular session convened, that from and after passage of this ordinance, it shall be unlawful for any person or persons, firm or corporation, to play, operate, or permit the playing or operation of phonographs, radios, bands, or any other mechanical contrivance or device which have loud speakers attached thereto, in such a manner as to be a nuisance to the neighborhood, it being the purpose of this ordinance not interfere with the legitimate and orderly playing of music, but to prohibit the playing of such music in a manner calculated to disturb the peace and quiet of the neighborhood.

Section 2. Be it further ordained, etc., that any person, firm, or corporation convicted for the violation of any of the provisions of this ordinance shall be fined in a sum not to exceed Fifty Dollars ($50.00), or imprisonment in the Parish jail for not more than thirty days, or both fine and imprisonment, within the discretion of the Court.

Section 3. Be it further ordained, etc., that the provisions of this ordinance do not apply to any municipality within the Parish of East Baton Rouge.

NO 43,067
CM

State of Louisiana — Parish of East Baton Rouge

NINETEENTH JUDICIAL DISTRICT COURT

ALEX W. WALL Assistant District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that

RONNIE M. MOORE

late of the Parish of East Baton Rouge, on the Fifteenth (15th) day of December in the year of our Lord One Thousand Nine Hundred and Sixty-one (1961) with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, ~~feloniously did~~ unlawfully did violate an ~~Title 12, Chapter 3, Section 100 of the~~ Ordinance~~s~~ of the Police Jury of East Baton Rouge Parish, Louisiana in that he did operate and permit the operation of a mechanical contrivance and device to which loud speakers were attached in such manner as to be a nuisance to the neighborhood,

contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

Alex Wall
Assistant District Attorney, Nineteenth Judicial District of Louisiana

Form 2
KENNEDY PRINT SHOP, INC.

No. 43.067

NINETEENTH
JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

STATE OF LOUISIANA

vs.

RONNIE M. MOORE (CM)

INFORMATION

UNNECESSARY NOISE

Filed March 30 A. D., 1962

s/ Betty Brady
Deputy Clerk, Nineteenth Judicial District Court

Assistant District Attorney

M. Bell

WITNESSES:

Captain Tom Henderson ✓
Deputies Pate & Raborn ✓
Sheriffs Office

3/30/62. [illegible]
7a + [illegible]
Set 4/10
[illegible] 4/5 [illegible]
4/3/62. [illegible]
4/4/62. [illegible]
4/9/62 [illegible]
4/10/62. [illegible]
4/11/62. [illegible]
4/12/62. [illegible] 4/16. [illegible]
4/24
4/16/62. [illegible]
4/24/62. 50/30 + 30 [illegible]
[illegible]

Juanita M. McNeil
Dy CLERK OF COURT

* * *

MINUTES OF COURT

* * *

FRIDAY, MARCH 30, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA
VS
RONNIE M. MOORE

NO. 43,067 - CRIMINAL SECTION

The accused, charged with violation of Title 12, Chapter 3, Section 100 of the Ordinances of East Baton Rouge Parish, Louisiana, was present in court represented by counsel, formally arraigned on said charge and pleaded not guilty. Assigned for April 10, 1962. Counsel for the accused reserved the right to file motions herein, and the court granted counsel for the accused until April 5, 1962 to file any motions he may see fit to file herein.

* * *

MONDAY, APRIL 2, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA
VS
RONNIE M. MOORE

NO. 43,067 - CRIMINAL SECTION

Motion for continuance filed on behalf of the accused, a copy of which was served on the office of the District Attorney in open court.

* * *

TUESDAY, APRIL 3, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

* * *

MINUTES OF COURT

* * *

FRIDAY, MARCH 30, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA
VS
RONNIE M. MOORE

NO. 43,067 - CRIMINAL SECTION

The accused, charged with violation of Title 12, Chapter 3, Section 100 of the Ordinances of East Baton Rouge Parish, Louisiana, was present in court represented by counsel, formally arraigned on said charge and pleaded not guilty. Assigned for April 10, 1962. Counsel for the accused reserved the right to file motions herein, and the court granted counsel for the accused until April 5, 1962 to file any motions he may see fit to file herein.

* * *

MONDAY, APRIL 2, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA
VS
RONNIE M. MOORE

NO. 43,067 - CRIMINAL SECTION

Motion for continuance filed on behalf of the accused, a copy of which was served on the office of the District Attorney in open court.

* * *

TUESDAY, APRIL 3, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

26

STATE OF LOUISIANA : NO. 43,067 - CRIMINAL SECTION
VS :
RONNIE M. MOORE :
............................:

On motion of the Assistant District Attorney, the bill of information herein was amended so as to delete "Title 12, Chapter 3, Section 100 of the" and to add the word "an" between the words "violate" and "ordinance" and to add the words "the Policy Jury of" between the words "of" and "East."

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WEDNESDAY, APRIL 4, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

NO. 42,603 : CRIMINAL SECTION
STATE OF LOUISIANA :
VS :
RONNIE M. MOORE :
NO. 43,067 :
STATE OF LOUISIANA :
VS :
RONNIE M. MOORE :
............................:

Counsel for the accused filed in open court a letter requesting subpoenaes to be issued to two parties to testify on behalf of the accused.

These cases came before the court on the motions for continuance previously filed herein. The motions were argued and submitted to the court on the argument and a memoranda filed on behalf of the accused. Whereupon, the court, for oral reasons assigned, rendered judgment herein overruling the motions for continuance filed, to which ruling of the court counsel for the accused excepted and asked that a formal bill be reserved.

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THURSDAY, APRIL 5, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : NO. 43,067 - CRIMINAL SECTION
VS :
RONNIE M. MOORE :
............................:

Counsel for the accused filed an application for bill of particulars and a motion to quash herein. Assigned for argument Monday, April 9, 1962.

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MONDAY, APRIL 9, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : NO. 43,067 - CRIMINAL SECTION
VS :
RONNIE M. MOORE :
............................:

Counsel for the accused filed a motion for a continuance herein. The motion was argued and submitted, and the court, for oral reasons assigned, denied the motion for a continuance, to which ruling of the court counsel for the accused excepted, "perfecting bill of exceptions by making a part of the said bill the motion for a continuance, the original bill of information, the bill of information as amended, the ordinances of the Parish of East Baton Rouge named in the amendment and in the original bill, and the ruling of the court."

The motion to quash previously filed herein was argued by counsel and submitted to the court, and the court, for oral reasons assigned, overruled the motion to quash, to which ruling counsel for the accused excepted and asked that the motion formerly filed, the ruling of the court all be made a part thereof.

The application for bill of particulars was next argued by counsel and submitted to the court, and the court, for oral reasons assigned, overruled the application for bill of particulars, to which ruling of the court counsel for the accused "respectfully except and ask that the application for bill of particulars, the ruling of the court be made a part of the formal bill of exception."

TUESDAY, APRIL 10, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA :
VS :
RONNIE M. MOORE :
..............................:

NO. 43,067 - CRIMINAL SECTION

This case was called for trial in accordance with previous assignment, the accused, charged with violation of an Ordinance of the Police Jury of East Baton Rouge Parish, Louisiana, being present in court represented by counsel.

Counsel for the accused filed a motion for a continuance herein. The court, for oral reasons assigned, overruled the motion for a continuance, to which ruling of the court counsel for the accused objected, making the written motion, the ruling of the court, thereon a part of the bill of exception, along with the rearraignment.

The accused, charged with violation of an Ordinance of the Police Jury of East Baton Rouge Parish, Louisiana, was present in court represented by counsel, formally arraigned on said charge and pleaded not guilty.

On motion of the District Attorney, the court ordered a sequestration of witnesses in this case.

Counsel for the accused filed a formal motion to desegregate the courtroom, counsel stating to the court that the motion was based on an alleged incident that occurred in the courtroom prior to the convening of the court and prior to the beginning of this trial. The court advised counsel that it had no knowledge of any such incident and inquired of counsel if this motion was filed by design, to which question counsel for the accused stated that it was not. At this time Mr. Pitcher, District Attorney, made the following statement and asked that it be made a part of the record: "Last Thursday or Friday afternoon I had a conference in my office with Mr. Alex Wall, the first assistant, and Murphy Bell, the attorney representing the defendant, who advised me at that time that the defendant in this case would make an issue of the segregated courtroom with the intent to embarrass the court, and I want the record to show that this was by design this morning, that it was prepared as shown by the motion that they have presented, and that the sole purpose that these people have is to embarrass the court in an attempt to talk about desegregation of the courtroom, and it was designed, it was brought up last week and Murphy Bell was advised of it before this case came to trial." Murphy Bell, counsel for the accused objected to the statement of the District Attorney that he advised him that he would attempt to embarrass the court, and stated as follows: "I think by the very statement itself means certainly that I wouldn't attempt to do something that was unethical or improper or unlawful and I certainly wouldn't tell the prosecuting attorney that I was deliberately trying to embarrass the court. I think he might have misconstrued my statement, my statement that every possible defense in this particular case were going to be undertaken here, and I said if that meant desegregation of the courtroom that issue might be brought out, along with every other issue, and I think that is the light. I definitely told Mr. Pitcher that any attempt of a motion of this type would not be done to embarrass any court, but it might be construed that way by some person who may not understand the basis of the motion." Mr. Pitcher then stated the following: "Your Honor asked counsel a question just a moment ago, and that is the only reason that I brought this up. Your Honor asked counsel if this was by design, and of course in all innocence he said no. Mr. Wall was present at this conference and Murphy Bell said this, that these are what these people are going to raise, and one of them is desegration of the court room with an intent to embarrass the court." The court stated that it was not embarrassed and was concerned only with the guilt or innocence of this accused, and denied the motion for the reason that that has nothing to do with this trial, that the judge is concerned with the guilt or innocence of the accused only, to which ruling of the court counsel for the accused excepted and took a bill of exception, making a part of that bill the motion to desegregate the courtroom, the remarks of counsel in support thereof, the request of counsel to take evidence in connection with the segregated character of the courtroom.

The introduction of evidence was begun, the accused being present in court represented by counsel. Evidence was introduced until 5 o'clock P.M., at which time the trial of this case was continued until Wednesday, April 11, 1962 at 2 o'clock P.M.

Counsel for the accused tendered an affidavit to the court in connection with the motion to desegregate the courtroom, to which the District Attorney objected to the filing of same. The court, for oral reasons assigned, sustained the objection, to which ruling of the court counsel for the accused excepted and reserved a bill of exception, making a part of the bill of exception the offering on the part of counsel for the defendant to file the affidavit or take a note of evidence, the objection of the District Attorney and the ruling of the court.

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WEDNESDAY, APRIL 11, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA :
VS :
RONNIE M. MOORE :
.............................:

NO. 43,067 - CRIMINAL SECTION

The trial of this case was resumed, the accused, charged with violation of an ordinance of the Police Jury of East Baton Rouge Parish, Louisiana, being present in court represented by counsel. The remainder of the evidence was introduced, the case argued and submitted, and the court, for oral reasons assigned, found the accused guilty as charged. Counsel for the accused excepted to the verdict of the court, and served notice in open court of his intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition.

The court ordered the accused remanded in the custody of the sheriff pending sentence.

::

THURSDAY, APRIL 12, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA :
VS :
RONNIE M. MOORE :
..........................:

NO. 43,067 - CRIMINAL SECTION

Counsel for the accused filed written notice of his intention to apply to the Supreme Court of Louisiana for writs of certiorari, mandamus and prohibition to review the sentence and conviction in the above case, a copy of which was served on the office of the District Attorney in open court.

. . . .

STATE OF LOUISIANA :
VS :
RONNIE M. MOORE :
..........................:

NO. 43,067 - CRIMINAL SECTION

The accused was present in court represented by counsel.

The court informed counsel for the accused that in view of the fact that the accused has formally notified the court of his intention to apply to the Supreme Court of the State of Louisiana for writs of certiorary, mandamus and prohibition to invoke the supervisory jurisdiction of said court to review the sentence and conviction in this case the court is going to grant bail at this time to the accused. The court fixed the amount of bail for the accused, he having been convicted of the charge lodged against him in this case, in the sum of $500.00, said bail to be in effect until the accused is sentence, and the court ordered that the accused be released on bail to await sentence herein on Tuesday, April 24, 1962.

Counsel for the accused filed a motion in arrest of judgment and a motion for a new trial herein. Said motions assigned for argument April 16, 1962.

::

MONDAY, APRIL 16, 1962

Nineteenth Judicial District Court, Criminal Division, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA :
VS :
RONNIE M. MOORE :
............................:

NO. 43,067 - CRIMINAL SECTION

This case came before the court on a motion in arrest of judgment and a motion for a new trial filed herein on behalf of defendant.

The motion in arrest of judgment was argued and submitted, and the court, for oral reasons assigned, overruled the motion in arrest of judgment, to which ruling of the court counsel for the accused excepted and reserved a bill of exception, asking that the bill of information, the amended bill of information, the motion to quash, the motions for continuance, the motion to desegregate the courtroom all be made a part of the formal bill, with the ruling of the court thereon in each pleading filed.

The motion for a new trial was argued and submitted, and the court, for oral reasons assigned, overruled the motion for a new trial, to which ruling of the court counsel for the accused excepted and asked that a formal bill of exception be reserved.

::

TUESDAY, APRIL 24, 1962

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : NO. 43,067 - CRIMINAL SECTION
VS :
RONNIE M. MOORE :
..............................:

The accused, having previously been tried and found guilty of violating an ordinance of the Police Jury of East Baton Rouge Parish, Louisiana, was present in court represented by counsel. The accused was brought before the bar for sentence. Whereupon, the court sentenced the accused to pay a fine of $50.00 and costs, or in default of payment thereof to be confined in the parish jail for thirty days, and in addition thereto to be confined in the parish jail for thirty days, to which sentence counsel for the accused excepted and stated to the court that he would like to renew his intention of filing an application for writs of certiorari, prohibition and mandamus to the Supreme Court of Louisiana. The court granted counsel for the accused sixty days in which to apply to the Supreme Court for writs, and fixed a bond in the sum of $500.00, said bond to be conditioned upon the final decision of the Supreme Court in this matter.

* * *

A TRUE AND CORRECT COPY
OF THE MINUTES OF COURT
THIS 28th DAY OF MAY, 1962.

Juanita M. McNeil
DY CLERK OF COURT

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA

VS. NUMBER: 43,067

RONNIE M. MOORE CRIMINAL DOCKET

::

APPLICATION FOR BILL OF PARTICULARS

NOW INTO COURT, through undersigned counsel comes RONNIE M. MOORE, made defendant in the above entitled and numbered cause, and before arraignment, pleads that he is unable to properly prepare his defense herein, until he is furnished with a Bill of Particulars upon the following, to-wit:

-1-

In what neighborhood or neighborhoods did the accused allegedly "operate and permit the operation of a mechanical contrivance and device to which loud speakers were attached in such a manner as to be a nuisance to the neighborhood."

-2-

State whether or not defendant is accused of allegedly playing music over the loud speakers "in such a manner as to be a nuisance to the neighborhood."

-3-

State whether or not defendant is accused of merely speaking into the loudspeakers "in such a manner as to be a nuisance to the neighborhood.

-4-

State whether or not any residents of the neighborhood, in which the nuisance was allegedly created, filed any complaints against the accused.

WHEREFORE, your defendant, RONNIE M. MOORE prays this application for Bill of Particulars be filed and a rule nisi issue out of this Honorable Court, commanding Honorable Sargent Pitcher, Jr., District Attorney, to show cause if any he has, why the requested Bill of Particulars should not be granted.

Attorneys for Defendant:

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

2211 Dryades Street
New Orleans, Louisiana

OF COUNSEL:

BENJAMIN E. SMITH
Civic Center Bldg.
New Orleans, Louisiana

Murphy W. Bell
971 S. 13th Street
Baton Rouge, Louisiana
BY: Murphy W. Bell

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

AFFIDAVIT

BEFORE ME, personally appeared the defendant,

------------------------RONNIE M. MOORE----------------------------

who, after being first duly sworn, deposes and says:

That the foregoing pleadings, "Application for Bill of Particulars," are true and correct.

Ronnie M. Moore
RONNIE M. MOORE

SWORN TO AND SUBSCRIBED before me this 5th day of April, 1962.

Murphy W. Bell
NOTARY PUBLIC

ORDER

The foregoing Application for Bill of Particulars considered; IT IS ORDERED that HONORABLE SARGENT PITCHER, JR., DISTRICT ATTORNEY show cause, if any he has on the ____day of April, 1962 at_____ o'clock __.M., why he should not furnish accused with the particulars as requested herein.

Baton Rouge, Louisiana, April ____, 1962

JUDGE

FILED
April 5, 1962
S/ Betty Body
DY. CLERK OF COURT

A TRUE COPY
Juanita M. McNeil

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA

VS. NUMBER: 43,067

RONNIE M. MOORE CRIMINAL DOCKET

* *

MOTION TO QUASH

NOW INTO COURT, through undersigned counsel, comes RONNIE M. MOORE, made defendant in the above numbered and entitled cause and moves to quash the "Bill of Information" in the cause hereof, for the following reasons, to-wit:

-1-

That the Bill of Information is insufficient to charge a crime under the "Unnecessary Noise Ordinance of East Baton Rouge Parish as enacted in 10-8-34, because it fails to allege that the accused was illegally and disorderly playing "music", as required by said ordinance.

-2-

In the alternative, that the Bill of Information under which the defendant is charged as well as the Ordinance are too vague and indefinite to charge a crime in that the terms and/or phrases, "nuisance to the neighborhood" and "legitimate and orderly playing of music", are not defined by said ordinance or by any other provision of the East Baton Rouge Parish Code.

-3-

That the ordinance under which the defendant is being charged, is contrary to the Constitution of the State of Louisiana, and to the laws thereunder, because being criminal, it does not set out with the required degree of certainty what constitutes the crime of "unlawful use of phonographs, radios, bands, or any other mechanical contrivance or device which loudspeakers attached thereto".

-4-

That the Ordinance, under which defendant is being charged herein, is being prejudicially and unconstitutionally applied, because defendant, a member of the Negro Race had been hereto fore engaged in activities protesting racial segregation; that when he attempted to speak out in this cause of justice and freedom, he was arrested, jailed and place under bail exceeding NINE THOUSAND FIVE HUNDRED And no/100 ($9,5000.00) DOLLARS.

-5-,

That the use of the criminal processes of the State of Louisiana in such a manner and in such a situation as described in Article 4, of this motion denies and deprives the defendant of his rights, privileges, immunities, and liberties guaranteed to him by the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Consiitution of the United States of America, of which he is a citizen.

-6-

That the said Bill of Information is insufficient to charge a crime under the East Baton Rouge Parish Ordinance, except that the Ordinance be unconstitutional under the Constitution of the State of Louisiana, and as applied, violative of freedom of speech and assembly guaranteed to defendant by the First Amendment to the Constitution of the United States of America.

WHEREFORE, your defendant, RONNIE M. MOORE, prays that this "MOTION TO QUAHH" be maintained and that the said Bill of Information as to him, be declared null and void, and that he be discharged therefrom.

MOVER further prays for all orders necessaary, and for general and equitable relief in the premises.

Attorneys for Defendant:

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

2211 Dryades Street
New Orleans, Louisiana

38

STATE OF LOUISIANA PARISH OF EAST BATON ROUGE

NINETEENTH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA

VS.

RONNIE M. MOORE

Desegr

NUMBER 43-067 CRIMINAL DOCKET

* *

TO THE HONORABLE THE JUDGES OF THE CRIMINAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

AND NOW into Court through undersigned counsel, comes RONNIE M. MOORE, accused herein and with all due respect to the court and after mature consideration as to the seriousness of this charge and a consideration of the relatedness and interdependence of all of the charges now pending against him in the Parish Of East Baton Rouge and after a thorough examination and analysis of the segregation laws of the State of Louisiana which reveals that while there are State Laws requiring segregation in Athletic Events, Entertainment, Social Functions, School Waiting Room Facilities, Eating and Drinking Facilities for employees, labeling of blood (in hospitals) by races, racial disegration of political candidates for office, and in public parks, recreation centers and playgrounds there are no State Statutes requiring segregation in Courthouses or Courtrooms. Your mover now avers that there is existing now and has existed for many, many years in the past segregation in the East Baton Rouge Parish Court House and in the Court Room in which this trial is being held. Your mover respectfully suggests that in accordance with the holding of the case of Seniers V. Arnold 1960 284 F 2d 106 it is incumbent upon him to call this fact to the attention of the presiding judge. Your mover herewith calls aforementioned fact to the attention of this Honorable Court. Your mover further suggests to this Honorable Court that he cannot obtain a fair trial in a court room in which there is judicially sanctioned racial segregation and that to so do would be a denial of his rights under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, your mover prays that this Honorable Court order that any spectator may sit in any of the seats provided for spectators and that all of the officials of this court be prohibited from directing any person to a particular seat or section by reason of his race, and that there is no specific section of the spectator seats reserved specifically for Negroes.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

2211 Dryades Street
New Orleans, Louisiana

MURPHY BELL
971 S. 13th Street
Baton Rouge, Louisiana

OF COUNSEL

CARL RACHLIN, ESQ.
280 Broadway
New York, New York

BENJAMIN E. SMITH
Civic Center Bldg.
New Orleans, Louisiana

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared:

RONNIE M. MOORE

who being duly sworn, did depose and say that all of the facts and allegations contained in the above and foregoing Motion are true and correct.

RONNIE M. MOORE

SWORN TO AND SUBSCRIBED

BEFORE ME THIS ____DAY OF

APRIL, 1962.

NOTARY PUBLIC

ORDER

IT IS ORDERED that any spectator may sit in any of the seats provided for spectators and it is further ordered that none of the officials of this court may direct any person to a particular seat or section by reason of his race and further ordered that there is no specific section of the spectator seats reserved specifically for Negroes.

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA

VS. NUMBER: 43-067

RONNIE M. MOORE CRIMINAL DOCKET

* *

MOTION FOR A NEW TRIAL

NOW INTO COURT, through undersigned counsel comes RONNIE M. MOORE, and moves the Court that the verdict rendered herein be set aside and a new trial ordered, for the following reasons, to-wit:

1.

That the Judgment is contrary to the law and the evidence in that the State could not prove "a nuisance was created in the neighborhood" within the usual meaning and reasonable understanding of said "nuisance tothe neighborhoo

2.

That the Court erred to the prejudice of the accused when defendant was denied the right to introduce evidence to prove the allegations of his "Motion to Desegregate the Courtroom"; that such evidence tended to prove that the fac of judicially sanctioned segregation using race as a factor in determining sea or other facilitied hampered the orderly presentation of his defense, prejudiced his right to a fair trial and violated rights guaranteed to him by Article I, Section 6 of the Constitution of the State of Louisiana, and also by th due process and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States, and as shown by the formal Bill of Exception reserved herein.

3.

That the Court erred to the prejudice of the accused in permitting testimony, over the objection and reservation of a formal Bill of Exception to the overruling thereof, as to any speeches that may have been made in view of the fact the "purpose clause"of the ordinance under which accused is prosecuted specifically states that "it being the purpose of this ordinance not to interfere with the legitimate and orderly playing of music but to prohibit the playing of such music in manner calculated to disturb the peace and quiet of the neighborhood".

4.

That the judgment is contrary to the law and to the evidence because the State did not prove beyond a reasonable doubt that defendant violated the Ordinance under which he was charged.

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable SARGENT PITCHER, JR., DISTRICT ATTORNEY ordering him to show cause, if any he has, why a new trial should not be granted in these proceeding.

By Attorneys:

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

2211 Dryades Street
New Orleans, Louisiana

OF COUNSEL:

BENJAMIN SMITH
Civic Center
New Orleans, Louisiana

MURPHY W. BELL
971 S. 13th Street
Baton Rouge, Louisiana

BY:____________________________

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

AFFIDAVIT

BEFORE ME, the undersigned authority, personally came and appeared the mover,

---------------------------------RONNIE M. MOORE---------------------------------

who, after being first duly sworn, deposes and said:

That all of the allegations of fact contained in his "MOTION FOR A NEW TRIAL" are true and correct.

____
RONNIE M. MOORE

SWORN TO AND SUBSCRIBED before me this 12th day April, 1962.

____
NOTARY PUBLIC

ORDER

Considering the foregoing Motion For A New Trial, IT IS ORDERED that HONORABLE SARGENT PITCHER, JR., DISTRICT ATTORNEY for the 19th JUDICIAL DISTRICT show cause on the _______day of April, 1962 at _____o'clock P.M., whya new trial should not be granted herein.

____
JUDGE,

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA

VS. NUMBER: 43,067

RONNIE M. MOORE CRIMINAL DOCKET

* *

MOTION IN ARREST OF JUDGMENT

NOW INTO COURT, after verdict against RONNIE M. MOORE, and before sentence, comes the said RONNIE M. MOORE through undersigned counsel, and moves the Court here to arrest judgment herein, and not to pronounce the same because of manifest errers in the record appearing to-wit:

1.

That the Court erred to the prejudice of the accused in denying the Motion to Quash filed herein in that the Police Jury Ordinance of the Parish of East Baton Rouge of October 8, 1934 and the Bill of Information Number 43,067 under which mover was charged is unconstitutional because it violates defendant's rights as secured to him under Article I, Section 10 of the Constitution of the State of Louisiana. He was not adequately informed of the nature and cause of the accusation against him; that the failure of the District Attorney to allege the particular ordinance in said Bill of Information was fatal to its validity.

2.

That the failure of the Trial Judge to sustain said Motion to Quash was prejudicial and in violation of defendant's rights under the Sixth Amendment to the Consititution of the United States, which provides that an accused shall be informed of the nature and cause of the accusation with which he is charged. Mover avers that he is a citizen of the United States of America, and that for feasons stated in Article I of this motion, under the Ordinance and the Bill of Information mentioned hereinabove, he has not been properly informed of the nature and cause of the crime with which he has been charged.

3.

That the Court erred to the prejudice of the accused in denying the Application for the Bill of Particulars, to which denial defendant excepted and reserved a formal Bill. The specific basis for the application, being that the State failed to inform the accused where the crime was committed in the Parish of East Baton Rouge; the Ordinance, by its terms excludes from its application similar proscribed activity that occur within the municipal city limits of all the towns and cities located in the said East Baton Rouge Parish. Mover alleges and avers that there are other towns and cities located within the boundaries of East Baton Rouge Parish, other than the City of Baton Rouge, namely, Zachary, Baker, Port Hudson, etc. that the State failure to specifically negative the commission of the alleged crime without the municipal boundaries of said towns and/or cities was fatal to the Bill of Information and prejudicial error under a denial for a Bill of Particulars.

4.

That the Court erred to the prejudice of the accused in denying a continuance on April 10, 1962, at which time defendant was rearraigned under the amended Bill of Information; that the defendant was denied the opportunity to file an amended Motion to Quash, which mover avers was prejudicial to his rights.

5.

That the Court erred to the prejudice of the accused in denying defendant's Motion to Desegregate the Courtroom. Mover avers that said ruling violated rights guaranteed and secured to him by the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States; that the fact of enduring a trial in a segregated courtroom with all segregated facilities hampered his defense and substantially prejuciced the ability of defendant to get a fair trial.

6.

That the Court erred to the prejudice of the accused in overruling the Motion to Quash. Said error specifically being that defendant's rights of freedom of speech which guaranteed to him by Article I, Section 3 of the Constitution of the State of Louisiana, and by First Amendment to the Constitution of the United States of America would be curtailed and restrained.

That the Court erred to the prejudice of the accused in denying the Motion to Quash on the grounds that Ordinance under which accused was charged and the Bill of Information are so vague and indefinite as to be constitutionally defective because no ascertainable standard of guilt is set out that would have put accused on notice that he was committing a crime.

WHEREFORE, mover prays that he have leave to file this MOTION IN ARREST OF JUDGMENT; that the same be granted because no judgment against him, the said RONNIE M. MOORE, can be lawfully rendered on said record.

Attorneys for Defenant:

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

2211 Dryades Street
New Orleans, Louisiana

OF COUNSEL:

BENJAMIN SMITH
Civic Center
New Orleans, Louisiana

MURPHY W. BELL
971 S. 13th Street
Baton Rouge, Louisiana

BY:_______________________________

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

AFFIDAVIT

BEFORE ME, the undersigned authority, personally came and appeared the MOVER,

---------------------------RONNIE M. MOORE-----------------------------------

who, after being first duly sworn, deposes and said:

That all of the allegations of fact contained in his "MOTION IN ARREST OF JUDGMENT" are true and correct.

RONNIE M. MOORE

SWORN TO AND SUBSCRIBED before me this 12th day of April, 1962.

NOTARY PUBLIC.

Sound Truck case

Filed 4/10 denied

STATE OF LOUISIANA PARISH OF EAST BATON ROUGE
NINETEENTH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA

VS.

NO. 43067 RONNIE M. MOORE Criminal Docket

MOTION FOR A CONTINUANCE

Now into court through undersigned counsel comes RONNIE M.MOORE and upon suggesting to the court that a bill of information was filed against him on the which charged him with violation of Title I2,chapter 3,sectionIOO of the ordinances of East Baton Rouge Parish, Louisiana;that defendant was arraigned on the charge of violation of Title I2, chapter 3, section Ioo of the ordinances of East Baton Rouge Parish, Louisiana on March 30,I962 to which information defendant pleaded not guilty reserving his right to file special pleadings ; that defendant was given until April 5,I962 to file special pleadings; that the argument of said special pleadings were on the 30th day of March verbally set for April IO,I962; that the argument of said special pleadings were changed by the district attorney and set up to be heard on April 9th. I962; that on April 2 ,I962 defendant filed a written motion for continuance and a Rule Nisi was ordered for April 4 ,I962 at which time the motion for continuance was denied;that on April 9th,I962 defendant argued the motion to quash which he had filed on April 5th,I962 which motion to quash was denied; that defendant further suggests to the court that he has never been arraigned on the amended bill of information until today April IOth,I962;that defendant has intentions of filing other motions herein to the amended bill of informaton WHEREFORE, the said RONNIE M. MOORE prays that he be allowed fifteen days within which to file special pleadings to the amended bill of information, and further prays that a Rule Nisi issue out of this Honorable Court commanding Honorable Sargent Pitcher Jr. District Attorney to show cause, if any he has, why the motion for continuance should not be granted.

OF COUNSEL:
CARL RACHLIN, ESQ.
280 Broadway
New York, New York

BENJAMIN SMITH
CIVIC CENTER BLDG.
NEW ORLEANS, LOUISIANA

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
22II Dryades st.
NEW ORLEANS,LOUISIANA
BY_______________
MURPHY BELL
97I S. I3th Street
BATON ROUGE, LOUISIANA

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME ,the undersigned authority personally came and appeared:

NILS R. DOUGLAS

WHO being duly sworn did depose and say that he is one of the attorneys for the accused, Ronnie M. Moore; that all of the allegations of fact herein are true and correct to the best of his knowledge, information and belief.

[illegible]

____
NILS R. DOUGLAS

SWORN TO AND SUBSCRIBED BEFORE ME, this IOth. day of April 1962

____
NOTARY PUBLIC

ORDER

The foregoing motion considered,IT IS ORDERED that Honorable SARGENT PITCHER JR. DISTRICT ATTORNEY show cause, if any he has, on ____day of __________1962, at __________oclock A.M. why a motion for a continuance should not be granted.

Baton Rouge, Louisiana, ______ day of__________1962

____
JUDGE

[illegible]

[illegible]

UNITED STATES, EX REL.
[illegible] MOORE
VS.
BRYAN CLEMMONS, [illegible]

MOTION TO [illegible]

TO THE HONORABLE E. GORDON WEST, JUDGE OF THE [illegible] OF THE UNITED STATES FOR THE [illegible] DISTRICT [illegible]

On motion of undersigned counsel, [illegible] who suggests to the Court that Murphy Bell, one of counsel of record for the Relator herein is confined in the General Hospital, and Nils Douglas, also of counsel, is detained in Court in New Orleans, Louisiana, and that mover has been [illegible] to [illegible], that this matter be continued without [illegible].

IT IS ORDERED that this matter be [illegible] Baton Rouge, Louisiana this ______ [illegible]

[illegible]

MURPHY BELL,
COLLINS, DOUGLAS & ELIE

BY: ______
Attorneys for Relator

[illegible] STATES [illegible]

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

UNITED STATES OF AMERICA [illegible] MOORE	:	NUMBER ____
VERSUS	:	
BRYAN CLEMMONS, SHERIFF EAST BATON ROUGE PARISH	:	ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

. . . . :

Upon the verified petition and exhibits attached of Ronald M. Moore, issuance of a writ of habeas corpus [illegible]

ORDERED that the respondent, The Honorable Bryan Clemmons, Sheriff of East Baton Rouge, Louisiana show cause before this Court at Baton Rouge, Louisiana, on the [illegible] day of February, 1964, at 10:30 o'clock A.M. why a writ of habeas corpus should not issue herein as prayed for in said petition and it is further

ORDERED that the petitioner be retained in custody within this district until further order of this Court and it is further ORDERED

That service of this order to show cause together with a copy of the verified petition and exhibits attached be served on respondent, the Honorable Bryan Clemmons, Sheriff of East Baton Rouge, Louisiana on or before the 25th day of February, [illegible] at ____ o'clock A.M.

Baton Rouge, Louisiana, this 24th day of February, 1964

(SIGNED) E. GORDON WEST

United States District Judge

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 734

RONNIE M. MOORE,
Petitioner,

v.

STATE OF LOUISIANA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Carl Rachlin,
Norman Williams, Jr.,
280 Broadway,
New York, N. Y.

Robert Collins,
Nils Douglas,
Lolis Elie,
2211 Dryades Street,
New Orleans, La.
Attorneys for Petitioner.

of Counsel:

Floyd McKissick,
Charles Oldham,
Murphy Bell.

Grosby Press, Inc., 30 Ferry St., N. Y. C.—BEekman—3-2336-7-8

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State v. Fowler, 79 Rhode Island 16, 83 Atlantic (2d)
67 (1951) and 80 Rhode Island 85, 91 Atlantic (2d
27 (1952), reversed, 345 U. S. 67 (1953) ...

State ex rel. Nicholas v. Headley, 48 Southern (2d) 8
(Florida, 1950) ...

Strauder v. West Virginia, 100 U. S. 303 (Octobe
Term, 1879) ...

Taylor v Louisiana, 370 U. S. 154 (1962) ...

Thomas v. Collins, 323 U. S. 516 (1945) ...

Thompson v. Louisville, 362 U. S. 199 (1960) ...

Valentine v. Chrestensen, 316 U. S. 52 (1942) ...

Virginia v. Rives, 100 U. S. 313 (October Term, 1879) ..

Wollam v. Palm Springs, 29 California Reporter 1, 37
Pacific (2d) 481 (1963) ...

Statutes Cited

28 U. S. C. 1257(3) ...

Louisiana Constitution, Article VII, Section 10 ...

Joint Resolution, Art. No. 630 of 1960, to amen
Louisiana Constitution Article X ...

IN THE

Supreme Court of the United State

OCTOBER TERM, 1963

No. ....

RONNIE M. MOORE,

Petitio

v.

STATE OF LOUISIANA,

Respon

PETITION FOR WRIT OF CERTIORARI TO TH SUPREME COURT OF LOUISIANA

Petitioner respectfully prays that a writ of certio
issue to review the decree of the Supreme Court of Lo
ana entered in the above-mentioned cause on October
1963, which denied (one judge dissenting) petition
Application for Writs of Mandamus, Certiorari and
hibition, thus affirming the verdict of conviction rend
by the Nineteenth Judicial District Court of East B
Rouge Parish, Louisiana (herein called the District Co
on April 11, 1962.

OPINIONS BELOW

The District Court found petitioner guilty for
reasons assigned, without written opinion. The m
randum opinion of the Supreme Court of Louisiana (J
McCaleb dissenting) is unreported and appears in
pendix B hereto, *infra,* p. 26.

JURISDICTION

he verdict of the District Court was rendered at the of defendant's case, on April 11, 1962. Petitioner's on for a new trial and in arrest of judgment were ruled on April 16, 1962. Petitioner's Application to Supreme Court of Louisiana for Writs of Mandamus, iorari and Prohibition was denied on October 10, 1963.

he jurisdiction of this Court is based upon 28 U. S. C. ion 1257(3).

QUESTIONS PRESENTED

etitioner was convicted of operating a mechanical rivance and device to which loud-speakers were at- ed in such manner as to be a nuisance to the neighbor- , in alleged violation of an ordinance of the Parish of Baton Rouge. The evidence showed that petitioner arrested pursuant to orders of the senior police officer nt, for the act of turning on a loud-speaker during a nstration against racial discrimination and allegedly ssive law enforcement, in Scotlandville, a suburb of Rouge.

e Federal questions are:

1. Whether petitioner's arrest for turning on a loud-speaker, during a meeting to protest against racial segregation and allegedly oppressive law enforcement, violated petitioner's constitutional rights of free speech and free assembly under the due process clause of the Fourteenth Amendment?

2. Whether the refusal of the District Co order desegregation of the courtroom durin tioner's trial violated petitioner's constit right to a fair trial under the due process cla the Fourteenth Amendment?

ORDINANCE INVOLVED

Petitioner was convicted of operating a mechanic trivance and device to which loud-speakers were at in such manner as to be a nuisance to the neighbo in alleged violation of an ordinance of the Police J East Baton Rouge Parish. The ordinance is prin Appendix A, *infra,* page 25.

STATEMENT

Both the factual and the legal background of the p case are familiar to this Court from a series of Louisiana cases.[1] So is the specific conflict from w arose—the continuing struggle over civil rights in Rouge, between the Negro students of Southern Uni —the largest land-grant segregated Negro univer the United States—and the local law-enforcement of

Southern University, a State-supported institutio 5,000 Negro students, is located in the Parish of East

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[1] *Bush* v. *Orleans Parish School Board,* 364 U. S. 500 *Louisiana ex rel. Gremillion* v. *N. A. A. C. P.,* 366 U. S. 293 *Garner* v. *Louisiana,* 368 U. S. 157 (1961); *Taylor* v. *Lo* 370 U. S. 154 (1962); *Lombard* v. *Louisiana,* 83 Suprem 1122 (1963). — U. S. —.

[2] See *Garner* v. *Louisiana,* 368 U. S. 157 (1961).

just North of the City of Baton Rouge, between the
ippi River and the main highway to the North
61). Just East of the University is Scotlandville, a
nincorporated town located around the acute-angled
n of U. S. Highway 61 and a smaller road also
g North (State 19), with a railroad crossing located
unction point. The incidents which gave rise to this
gan on the University premises and culminated on
eets of Scotlandville.

rting on December 12, 1961, the day after announce-
f the decision of this Court in *Garner* v. *Louisiana,*
S. 157, a series of demonstrations[3] (including both
s'' and picketing) were started in and near Baton
by students of Southern University, and continued
veral days; and the authorities responded with 23
, all for picketing, on December 14th. On the 15th,
xt morning, a mass demonstration started on the
sity premises—to protest against these arrests,
the allegedly oppressive policy and tactics of the
w enforcement officials, and against racial segrega-
general. About 10 A.M. a large body of demonstrat-
dents—comprising the bulk of the student body,
ng to the police (T. 144)*—moved East off the University premises to attend a meeting at the Cam
Memorial Church, located on U. S. Highway 61 jus
the North. A car, equipped with a rented loud-spe
system and containing petitioner (chairman of C. O.
in Baton Rouge) and four other students, accompanie
students on this march; and the loud-speaker system
used intermittently for playing music and for spea
(T. 131-133, 165, 173, 176-177). At the end of the mee
the students emerged from the church and continued
onstrating, sometimes overflowing onto the streets, so
at times traffic was kept open by the police officers an
other times it was blocked (T. 39, 65, 79, 103, 138, 175-
There was no indication of violence (T. 103). About
time, the car containing petitioner moved a few bl
North on Highway 61, turned East, and then retu
South on State 19 (T. 26, 39, 101, 131-133); and agai
loud-speaker was used intermittently for music
speeches (T. 26, 90, 134, 197). Several Parish police
were patrolling in the vicinity all morning (T. 116, 1
and about this time Captain Henderson, the senior o
present, heard the loud-speaker from a point several bl
away (T. 132-135). Shortly thereafter, at a time (a
11 o'clock) when the loud-speaker was stopped (T.
Captain Henderson ordered the other police officer
arrest the occupants of the car if the loud-speaker
turned on again (T. 49, 56, 70, 78, 89, 115, 178). As
car came South on State Highway 19, the loud-speaker
used again, then shut off (T. 26, 90, 134, 197); and
police officers promptly followed Captain Henders
orders and arrested all the occupants of the car (T
101, 111). The arresting officers acted purely on the

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e demonstrations are involved in, and described in the
, *Congress of Racial Equality* v. *Clemmons,* 323 Federal
(C. C. A. 5th, 1963), now before this Court on petition for
ertiorari: see particularly pages 134, 202, and 234 of that

rences to the Record are designated by the symbol "R".
a transcript of the trial was made by an official court ste-
in accordance with Louisiana practice it was not part of
l before the Louisiana Supreme Court. To supplement
l the transcript is submitted with this petition and refer-
are designated by the symbol "T."

ain Henderson's instructions, and not as a result
cision of their own that a violation of law was in-
(T. 89, 106, 121, 200).[4] No warning was given
playing the loud-speaker (T. 176-177).

testimony on the morning's events came from Cap-
nderson, from four other police officers, and from
persons living or working in Scotlandville. Some
testimony is contradictory and much is confusing.
ate's case depended entirely upon evidence given
own police officers; and such evidence is strikingly
ate on several critical points. The record makes
w little the policemen really knew on basic elements
f. It is clear that *inter alia* petitioner spoke against
iscrimination over the loud-speaker (T. 79, 93, 151-
), 199), but no one knew much of what he said.
icemen heard the loud-speaker—or at least *a* loud-
, not specifically identified—several times during
ning, but almost always from several blocks away;
they were unable to distingush any (or many)
or even whether what they heard was words or
T. 27, 29, 42-43, 45, 50-51, 62, 69, 74, 79, 100, 106, 108,
166-169, 172, 182-183). They were not sure whether
etitioner was giving instructions to the demonstrat-
ents (T. 65, 69, 93 ff., 166-167). The policemen
testified that the noise was loud—a point dis-
local residents, as indicated below—and one of the
officers made clear his criterion on this point:

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so the description of this arrest in the record in *Congress*
quality v. *Clemmons,* 323 Federal (2d) 54 (C. C. A. 5th,
e 78.

> "Well, it was loud enough to draw a crowd."
> 114)

Not a single complaint was made about the noise by any
in the neighborhood (T. 58, 68, 106, 120-121, 176). Sev
persons working or living in the immediate area testi
that the noise was not loud enough to disturb them (T.
227, 228, 230, 232-234, 236).

The atmosphere of the trial, and indeed of the b
ground (and basis) of the entire proceeding, is vividly il
trated by the prosecution's treatment of defendant's
nesses. The cross-examination of these witnesses was
centrated heavily on two issues—whether each witness
a member of the N. A. A. C. P., and whether the wit
was a member of C. O. R. E. (T. 226, 228-229, 231, 234-2

Petitioner was charged with violating an ordinanc
the Police Jury of East Baton Rouge Parish, and arraig
on March 30, 1962, and he pleaded "not guilty". The
of Information (R. 24) alleged that he "did operate
permit the operation of a mechanical contrivance
device to which loud speakers were attached in such m
ner as to be a nuisance to the neighborhood."

Petitioner's motion for a bill of particulars was de
(R. 34, 27). The said motion had sought to require set
forth the alleged offense in sufficient detail so as to pe
petitioner to prepare a defense. The motion asked
petitioner be advised of the neighborhood or neighborh
where the offense allegedly occurred, whether petiti
was accused of playing music over the loud speake
merely speaking into it, and whether any residents of
neighborhood filed any complaints. The District C

ed the motion for oral reasons assigned on April 9,

t the same time, petitioner filed a motion to quash the
rmation (R. 36), on the ground that it was unduly
e as to the precise offense charged, and that the prose-
n deprived petitioner of the rights, privileges, im-
ities and liberties guaranteed to him by the Fourteenth
ndment. This motion was also denied for oral reasons
gned on April 9, 1962.

he case was called for trial on April 10, 1962. Counsel
etitioner filed a motion to desegregate the courtroom
38, 28), on the ground that petitioner could not receive
ir trial in a court room in which there is judicially-
tioned racial segregation, and that such a trial would
te petitioner's rights under the Fourteenth Amend-
. The motion was denied, on the grounds that this
was concerned only with the guilt or innocence of
ioner, and that this motion had nothing to do with
issue.

e trial took place before Judge Fred S. LeBlanc on
10 and 11, 1962. Defendant moved for a directed
t of acquittal at the end of the prosecution's case
8-220). The motion was denied (T. 220 ff.) on the
l that the State had made out a *prima facie* case of
ense as charged.

the end of the trial, the Court found the petitioner
for oral reasons assigned. Subsequently, after the
written notice of intention to apply to the Supreme
f Louisiana for writs of mandamus, certiorari and

prohibition, petitioner was released on $500 bail on
12, 1962.

A motion for a new trial was made (R. 41), o
grounds that the judgment was contrary to the law an
evidence, and that the denial of the motion to desegr
the courtroom was a violation of petitioner's rights
the Fourteenth Amendment. This motion was deni
April 16, 1962, for oral reasons assigned.

A motion in arrest of judgment was made (R. 44
the grounds *inter alia* that the denial of the moti
desegregate the courtroom was a violation of petitio
rights under the Fourteenth Amendment, and tha
prosecution violated his right to freedom of speech
the Fourteenth Amendment. This motion was deni
April 16, 1962, for oral reasons assigned.

On April 24, 1962, the petitioner was sentenced t
a fine of $50.00 and costs, or in default of payment th
to be confined in the parish jail for thirty days, a
addition thereto to be confined in the parish jail for
days.

The petitioner sought review of the judgment o
viction and sentence by the Supreme Court of Loui
Under Louisiana law no appeal procedure was avai
since the sentence was for less than six months an
fine was under $300.00. Review was sought, however,
the general supervisory jurisdiction of the Supreme
(Louisiana Constitution, Article VII, Section 10), a
application was made to that Court for writs of mand
certiorari and prohibition. The Louisiana Supreme
held (with Judge McCaleb dissenting) that there w
error in the rulings of the District Court.

W FEDERAL QUESTIONS WERE RAISED

Federal questions here presented were specifically
the District Court by written motion to quash the
nformation (R. 36), by written motion to desegre-
rtroom (R. 38), by written motion for a new trial
and by written motion in arrest of judgment (R.
ch of the said motions was overruled for oral
assigned.[5] In petitioner's Application to the
Court of the State of Louisiana for writs of
us, Certiorari, and Prohibition, specific reference
in made to the Federal questions sought to be
l (R. 8 ff.).

ioner's Federal claims were thus made at the earli-
rtunity and were renewed at each stage of the pro-
below.

REASONS FOR GRANTING THE WRIT

ioner's conviction herein was based upon the tes-
of four police officers and their supervisor on a
worded charge of nuisance. While there was some
l mention of the possibility of holding petitioner
le for the alleged nuisance committed by other
n thronging the streets and sometimes blocking
proof wholly fails to show that petitioner was
e for the conduct of such other persons (T. 53,
91 ff., 106, 166-167). The alleged nuisance there-

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case of the motion to desegregate the courtroom, there
ce in the minutes of the court to the reasons given

fore can only derive from the volume of noise emerg
from the loud-speaker. On this point the uncorrobora
testimony of police officers, during a period of acute c
flict between Negro demonstrators and law-enforcem
officials, is obviously a weak reed onto which to hang
whole case, especially when disputed by independent w
nesses; and the record is replete with indications that
principal interest of the police and other law-enforcem
officials was in breaking up the peaceful assembly and
further persecuting members of responsible organizati
leading the Negro protest movement in Louisiana (T.
ff.). In addition, the refusal of the trial judge to or
desegregation of the courtroom, in a trial of this ty
raises the most serious questions about the proper admi
tration of justice.

CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT

The arrest, trial and conviction of petitioner under
circumstances stated above violated petitioner's consti
tional rights in two ways; and the decisions to the contra
in the Louisiana courts are in direct conflict with applica
decisions of this Court and with basic principles of cons
tutional law set forth therein.

Free Speech. Petitioner's arrest and conviction
turning on a loud-speaker, during a meeting to prot
against racial segregation and allegedly oppressive l
enforcement, violated petitioner's constitutional rights
free speech and free assembly under the due process clau
of the Fourteenth Amendment.

ceful demonstrations on the streets are constitution-
otected. The right of peaceful assembly to protest
nces is one of the fundamental constitutional rights,
ed against State interference by the due process
of the Fourteenth Amendment. *DeJonge* v. *Oregon,*
S. 353 (1937); *Edwards* v. *South Carolina,* 372 U. S.
63). Any ". . . state action which may have the effect
tailing the freedom to associate is subject to the
scrutiny." *N. A. A. C. P.* v. *Alabama ex rel. Patter-*
7 U. S. 449, 460-461 (1958). Indeed, publicly-enforced
segregation is itself a violation of constitutional
and a meeting to protest against such public en-
ent is, as this Court put it in the *Edwards* case,

> ". . . an exercise of these basic constitutional
> rights in their most pristine and classic form." (372
> U. S. at 235)

ver, this Court has recognized specifically that a
l street demonstration is an appropriate way of
ing these rights, for "City streets are recognized as
nal place for the exchange of ideas by speech or
" (*Kovacs* v. *Cooper,* 336 U. S. 77, 87 (1949); com-
chneider v. *State,* 308 U. S. 147 (1939); *Valentine*
stensen, 316 U. S. 52 (1942)). This Court has also
zed that group action may often be a more effective,
erefore appropriate, method of advocating ideas.
. C. P. v. *Alabama ex rel. Patterson,* 357 U. S. 449
Indeed, such peaceful demonstrations directed
segregation may themselves be regarded as part of
ee trade in ideas," even apart from any verbal
ions uttered there. *Garner* v. *Louisiana,* 368 U. S.

157, 201 (1961) (concurring opinion, by Mr. Justice
lan). The right to carry on such demonstrations, whi
course not absolute, thus occupies an honored place ir
constitutional system.

Communication at such meetings by the use of
speakers obviously raises special problems, because o
possible impact of noise on the areas nearby; yet a rea
able use of such loud-speakers is also constitutionally
tected as a form of free speech. *Saia* v. *New York,* 334
558 (1948); *Kovacs* v. *Cooper,* 336 U. S. 77 (1949). In
loud-speakers have been recognized as ". . . indispen
instruments of effective public speaking." *Saia* v.
York, supra, at 561. In the *Saia* case, this Court held
the use of such loud-speakers may be regulated by a
rowly-drawn statute, regulating such matters as the
and place of their use and the volume of noise;[6] ye
court warned that in such a situation the Courts
exercise caution in reviewing proceedings, for "Annoy
at ideas can be cloaked in annoyance at sound" (334
at 562). Equally pertinent and realistic here is the v
ing by Mr. Justice Jackson in connection with searche
seizures:

> "We must remember that the extent of any priv
> of search and seizure without warrant whic
> sustain, the officers interpret and apply thems
> and will push to the limit." (Dissenting in *Bri*
> v. *U. S.,* 338 U. S. 160, 182 (1949)).

While the ruling in *Saia* v. *New York, supra,* was mo
—to an extent which is not wholly clear—in *Kova*
Cooper, 336 U. S. 77 (1949), also a 5 to 4 decision

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[6] See also *Shelton* v. *Tucker,* 364 U. S. 479 (1960).

er decision did not affect any of the principles set forth
ve, except that a conviction on a more broadly-worded
ute was upheld in a case where the majority of the
rt felt that the facts would satisfy the requirements of
arrowly-drawn law.

In such cases involving First- and Fourteenth-Amend-
t rights, it does not matter that the claim for suppres-
is based on an allegation of nuisance, for the rights
free communication have been held to prevail against
h an argument. *Lovell* v. *Griffin,* 303 U. S. 444 (1938).

This Court has defined the proper extent of Supreme
rt review in cases of this type coming up from the
te courts. In *Edwards* v. *South Carolina, supra,* the
rt said:

> "In cases in which there is a claim of denial of rights under the Federal Constitution, this court is not bound by the conclusions of lower courts, but will reexamine the evidentiary basis on which those conclusions are founded."

also *Feiner* v. *New York,* 340 U. S. 315 (1951). In this
t, therefore, the question in this case is whether—
g a fresh look at the facts as they appear in this
d—the activity for which petitioner was arrested and
cted falls within (a) the area of free speech and
bly, constitutionally protected, or (b) the area of
regulation by the state. (Assuming, that is, that there
evidence which would support a conviction, *Thomp-*
Louisville, 362 U. S. 199 (1960).) These two areas
course in essence polar concepts: where one ends,
nition the other starts; and the boundary between
wo areas will shift back and forth according to the

circumstances of each case, as viewed by this Cour
Thomas v. *Collins,* 323 U. S. 516 (1945).

Despite the confusion on detail, the facts in thi
as set forth above speak for themselves. Only a few
need to be re-emphasized here. The whole case—a
others now before this court—arose out of a series o
onstrations against racial segregation in Baton
immediately after the announcement of the opinion
court in *Garner* v. *Louisiana,* 368 U. S. 157 (1961).
tioner was arrested by a Parish policeman, acting
explicit instructions of the senior police officer in th
Those instructions were to arrest petitioner if he
on the loud-speaker system again, with no regard f
loud it would be (T. 89, 106, 121, 200), because that
was of the opinion that further use of the loud-s
system would be such as to constitute a nuisance.
single complaint had been received that it was an
ance to the neighborhood. The only testimony pr
by the state as to loud noise, from the police office
in conflict with the testimony of independent wi
Typical of the police testimony were remarks by
officers that they did not like the subject-matter (T
and that the loud-speaker was loud enough to
crowd (T. 114). If the latter is the test of pun
conduct, clearly the right of free assembly is unli
be widely exercised. In this situation the testim
reminiscent of the comment in a very similar recent
of this court:

> "... the police ... were left with nothing to
> their actions except their own opinions that i
> breach of the peace for petitioners to sit pe

> in a place where custom decreed they should not sit.''[7]

record thus falls far short of showing the sort of ance to the neighborhood which would warrant inter- ce by the Parish authorities.

egregation in the Courtroom. The refusal of the Dis- Court to order desegregation of the courtroom during ioner's trial violated petitioner's constitutional right fair trial under the due process clause of the Four- h Amendment.

t the start of the trial petitioner made a motion re- ting the trial judge to order the courtroom to be deseg- ted during the trial; and the judge refused (R. 38,)). This ruling of course violated the constitutional s of Negro spectators at the trial; for as this Court only last term in *Johnson* v. *Virginia,* 373 U. S. 61, 62 3), a case involving the conviction of a Negro for sit- in the ''white'' section of a State courtroom:

> ''. . . it is no longer open to question that a state may not constitutionally require segregation of public facilities . . . State-compelled segregation in a court of justice is a manifest violation of the State's duty to deny no one the equal protection of the laws.''[8]

e principle thus reaffirmed in the *Johnson* case is y determinative of petitioner's right in this proceed-

ing. The insistence by the state authorities on maint segregated seating arrangements at petitioner's tria clearly a continuing ''manifest violation of the state's to deny no one the equal protection of the laws''; was also something more than merely a negative den rights due. For, under this ruling, the State autho were using the arrangements in the courtroom to out an affirmative demonstration of the State's pers oft-restated[9]—and unlawful—policy that Negroes a be segregated, and their inferior status thus empha Such an unlawful use of the courtroom in which peti was being tried inevitably affected the atmosphere trial. Petitioner, a Negro on trial for an incident a during a protest against racial segregation, coul possibly receive a fair trial under these conditions. racial segregation is flaunted in a temple of justic error infects the entire proceedings.

The point is a novel one in this Court, but past dec of this Court—on racial segregation and on proc due process—have pointed directly towards this concl

This Court has given frank recognition to one central facts of American experience, that racial se tion is ''inherently unequal'' in its effects (*Brown* v. *of Education,* 347 U. S. 483, 495 (1954)), i.e., that en tion is an explicit expression of the doctrine of the uperiority of whites and the racial inferiority of , and a principal means of implementing that . In particular, this Court has long recognized the importance of this principle in the administration ce; for, nearly 100 years ago, this Court said:

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[7] *rner* v. *Louisiana,* 368 U. S. 157, 174 (1961).

[8] e also *Derrington* v. *Plummer,* 240 Federal (2d) 922 (C. C. A. 56), certiorari denied, 353 U. S. 924 (1957); *Seniors* v. 284 Federal (2d) 106 (C. C. A. 5th, 1960).

[9] In addition to manifold legislation covering specific situ the Louisiana legislature in 1960 adopted the following prefa joint resolution concerning the possible integration of an supported facility in the state: "Whereas, Louisiana has maintained a policy of segregation of the races, and where the intention of the citizens of this sovereign state that such a be continued. . . ." (Art. No. 630 of 1960, to amend Articl the Louisiana Constitution.)

> "The very fact that colored people are singled ut and expressly denied by a statute all right to articipate in the administration of the law, as urors, because of their color, though they are citi- ens, and may be in other respects fully qualified, is ractically a brand upon them, affixed by the law, an ssertion of their inferiority, and a stimulant to that ace prejudice which is an impediment to securing o individuals of the race that equal justice which he law aims to secure to all others."[10]

recognition that publicly-enforced segregation rily means inequality has been followed out through manifold implications in the torrent of litigation as followed *Brown* v. *Board of Education, supra;* that litigation this Court has evolved a judicial hich, while steadfast in basic principle, is flexible daptation to all sorts of special circumstances and s, and is in addition realistically sensitive to the nce of intangible factors. In the process of all traditional attitudes and practices have come in

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uder v. *West Virginia,* 100 U. S. 303, 308 (1880). The a state judicial officer, taken in the performance of his ies, is of course "state action" quite as much as the analo- n of legislative or executive officers; and so on the Four- endment guarantees of due process and equal protection also *Virginia* v. *Rives,* 100 U. S. 313, 318 (1880); *Shelley r,* 334 U. S. 1 (1948).

for re-examination. For example, in cases where in t nature of things those most directly affected by segregati cannot or will not appear, other parties have been p mitted to raise the issue of racial segregation. *Barrows Jackson,* 346 U. S. 249 (1953); compare *N. A. A. C. P. Alabama ex rel. Patterson,* 357 U. S. 449 (1958).

The requirement of procedural due process is a ma feature of modern constitutional law. Repeated decisi of this Court have indicated that the basic elements o fair trial, guaranteed to all defendants by the due proc clause, include more than the obvious basic procedu necessities[11] which stand out in a formal record—a specifically, that such guarantees extend to intangi factors. In particular, the pervading atmosphere of a tr has been recognized as a major factor affecting its o come;[12] and so trials conducted in an atmosphere hos to the defendant and his rights have been held a denial due process. See *Moore* v. *Dempsey,* 261 U. S. 86 (192 and *Frank* v. *Mangum,* 237 U. S. 309 (1915). While cases litigated have generally involved prejudice which not only dominant in the proceeding but raucously pressed, the latter is not an indispensable element in th decisions. The principle is a broader one, and extends

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[11] The Court's insistence upon the main elements of proced due process has extended over many decades. Compare for exam the strikingly similar cases (and statements of facts) in *Pierr Louisiana,* 306 U. S. 354 (1939), and *Eubanks* v. *Louisiana,* U. S. 584 (1958).

[12] Compare the cases in which newspaper or television campa or announcements before trial have created an atmosphere whe fair trial is impossible. See for example *Irvin* v. *Dowd,* 366 U 717 (1961); *Rideau* v. *Louisiana,* 373 U. S. 723 (1963).

g-established public demonstrations of the principle of
al inequality, enforced by public authority, even if their
rent expression almost verges upon the gentlemanly.
eed, a principle which is so long-established as to com-
d wide and almost unconscious acceptance is likely to
e more pervasive effects—especially when it bears the
np of approval from public authority.

n considering the basic elements of a fair trial, we are
ing here with a constitutional principle of commanding
ortance; as Mr. Justice Frankfurter recently put it,[13]

> "More than one student of society has expressed the view that not the least significant test of the quality of a civilization is its treatment of those charged with crime, particularly with offenses which arouse the passions of a community. One of the rightful boasts of Western civilization is that the State has the burden of establishing guilt solely on the basis of evidence produced in court and under circumstances assuring an accused all the safeguards of a fair procedure."

he application of these principles to the specific facts
e present case is clear enough. No principle of wide
cability is necessarily involved. In the trial following
rrest arising directly out of a protest against racial
mination, the insistence by the State authorities on
aining in the courtroom itself the accepted symbols of
superiority (and inferiority) infects the entire pro-
gs, and automatically prevents defendant for receiv-
at fair trial required by the due process clause.

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[13] oncurring in *Irvin* v. *Dowd*, 366 U. S. 717, 729 (1961).

IMPORTANCE OF THE FEDERAL QUESTION

A major advantage of democratic institutions is
when they are operating freely, major changes in the
nomic and social structure can be carried out in a pea
and fairly orderly manner. In recent decades, and
ticularly in connection with the rapidly increasing N
protest against historic injustices, an increasing part o
Court's work has been concerned with protecting the
dom of these processes of peaceful change, and wit
plementing the constitutional guarantee of equal treat
in all sorts of novel situations. What is involved he
therefore more than the protection of individual righ
is also the guarantee, on behalf of the entire country
an opportunity is provided for the processes of change
peaceful and not violent. In this process it is of c
also important to ensure the protection of other citize
the pursuit of their different activities—but to do so
a sense of perspective. It must be remembered that
historic movements of spontaneous protest against op
sion are inherently untidy and inherently unsettling
sorts of established arrangements; it cannot be exp
that they will never create a traffic jam, or never c
enough noise to annoy hostile policemen. The two Fe
questions presented here involve logical and importan
steps in carrying out the Court's role in this historic pr

The first question here involves the extent of prot
of free speech and free assembly against arbitrary
action. In such a case this Court will review the evi
and reach its own judgment on whether the interf
here with free expression was required by some co
vailing public interest. *Niemotko* v. *Maryland,* 340

58 (1951); *Feiner* v. *New York,* 340 U. S. 315 (1951). The
stimony of the police officers here, uncorroborated by a
ngle independent witness, falls short in important par-
culars of proving any such need. The fact that the com-
aint is phrased in terms of nuisance does not automatically
rovide the power to muzzle free expression. ***Lovell* v.**
riffin, 303 U. S. 444 (1938).

The use of sound trucks does of course provide prob-
ms for legitimate public regulation. In *Saia* v. *New York,*
4 U. S. 558 (1948), a majority of this Court held that
ch use may be regulated by narrowly-drawn legislation,
rected to such matters as the appropriate time and place
such use and the volume of noise; and in *Kovacs* v.
oper, 336 U. S. 77 (1949), the Court upheld a conviction
der an ordinance phrased in general terms, where a
ajority of the Court felt that the proof would satisfy the
quirements of such a statute. Both were 5-to-4 decisions.
e state courts have been having much difficulty in admin-
ering the somewhat conflicting rules laid down in these
decisions. See for example *Haggerty* v. *Associated*
rmers of California, 44 California (2d) 60, 279 Pacific
) 734 (1955); *Wollam* v. *Palm Springs,* 29 California
orter 1, 379 Pacific (2d) 481 (1963); *Commonwealth* v.
ss, 168 Pennsylvania Superior 22, 76 Atlantic (2d) 500
0), affirmed, 368 Pennsylvania 290, 81 Atlantic (2d) 553
1), appeal dismissed for want of a substantial federal
tion, 342 U. S. 912 (1952); *State* v. *Fowler,* 79 Rhode
d 16, 83 Atlantic (2d) 67 (1951), and 80 Rhode Island
Atlantic (2d) 27 (1952), reversed, 345 U. S. 67 (1953).
pare *State ex rel. Nicholas* v. *Headley,* 48 Southern
80 (Florida, 1950), and *Brinkman* v. *Gainesville,* 83

Georgia Appeals 508, 64 South Eastern (2d) 344
Clarification is needed on the extent of individual f
and permissible public control in sound-truck cases,
present case provides an appropriate opportunity.

The second point, a novel question in this Cou
logical development from previous decisions. C
there is no place where publicly-enforced racial segr
is more inappropriate or offensive than in a court of
dedicated above all to equal rights before the lav
point is established as to the rights of spectators,
v. *Virginia,* 373 U. S. 61 (1963), whose interest
casual. Since attendance at court is voluntary,
most people only an occasional event, challenges fro
tators are likely to be—as they have been—rare.
settled legally is the more serious matter, the im
the rights of a Negro defendant—for whom the tr
result in loss of liberty (as here), or even life—
required to stand trial on an issue involving equal
courtroom where the State is blatantly asserting it
in inequality. The elimination of segregation in
rooms, of all places, is a major unfinished busi
American democracy; and this case presents th
squarely.

CONCLUSION

r the foregoing reasons, this petition for writ of rari should be granted.

Respectfully submitted,

Carl Rachlin,
Norman Williams, Jr.,
280 Broadway,
New York, N. Y.

Robert Collins,
Nils Douglas,
Lolis Elie,
2211 Dryades Street,
New Orleans, La.
Attorneys for Petitioner.

unsel:
loyd McKissick,
harles Oldham,
urphy Bell.

APPENDIX A

Passed: October 8, 1934

ORDINANCE

Be it ordained by the Police Jury of the Paris East Baton Rouge, in regular session convened, that and after passage of this ordinance, it shall be unlawfu any person or persons, firm or corporation, to play, ope or permit the playing or operation of phonographs, ra bands, or any other mechanical contrivance or device have loud speakers attached thereto, in such a manner be a nuisance to the neighborhood, it being the purpo this ordinance not interfere (sic) with the legitimat orderly playing of music, but to prohibit the playing of music in a manner calculated to disturb the peace and of the neighborhood.

Section 2. Be is further ordained, etc., that any pe firm, or corporation convicted for the violation of a the provisions of this ordinance shall be fined in a sur to exceed Fifty Dollars ($50.00), or imprisonment i Parish jail for not more than thirty days, or both fin imprisonment, within the discretion of the Court.

Section 3. Be it further ordained, etc., that the p sions of this ordinance do not apply to any munici within the Parish of East Baton Rouge.

APPENDIX B

Memorandum Opinion of the Supreme Court of Louisiana, Judge McCaleb, Dissenting

SUPREME COURT OF LOUISIANA
New Orleans

No. 46,930 October 10, 1963
State of Louisiana
v.
Ronnie M. Moore

In re: Ronnie M. Moore applying for writs of mandamus, certiorari and prohibition

---

Writ refused. We find no error of law in the rulings of the District Court.

/s/ JWS
/s/ JBF
/s/ JBH
/s/ FWH
/s/ WBH
/s/ FWS

McCaleb, J., is of the opinion that writs should be granted.

A True Copy
Clerk's Office
Supreme Court of Louisiana
ew Orleans
ctober 10, 1963

s/ Harold A. Maise, Jr.
eputy Clerk

Seal]

From the Desk of
Nils R. Douglas
Attorney

CARL:

THE JUDGE HAS NOT YET SIGNED THE BILLS OF EXCEPTIONS. WE MAY HAVE TO MANDAMUS HIM TO DO SO. THUS, THESE PLEADINGS HAVE NOT BEEN FILED YET.

PLEASE SEND TAYLOR DECISION

Nils

RECEIVED
JUL 2 1962
VLADECK & ELIAS

Mr. John Kepke
1 Grace Court
Brooklyn 1, New York

Dear Mr. Kepke:

I appreciate you sending [illegible] over the signature of one James [illegible] Congress of Racial Equality in which they [illegible] raise funds for that organization.

In twenty-five years of police experience [illegible] never seen a more flagrant distortion [illegible] than is contained therein. Ronnie Moore was [illegible] December 15, 1961, by the East Baton Rouge Parish [illegible] Office on the charge of unauthorized use of a [illegible]. This arrest was made completely outside the [illegible] of the City of Baton Rouge, Louisiana, and no [illegible] Baton Rouge Police Department was involved in [illegible]. So far as I know, Ronnie Moore has never [illegible] gas in his life, and certainly not from us. [illegible] has never been in contact with or even in [illegible] the police dogs owned by the Baton Rouge Police [illegible].

In regard to the allegation [illegible] ment that the District Attorney, [illegible] offered to allow Ronnie Moore to plead guilty [illegible] is a false and complete fabrication [illegible] tion whatever. I have discussed this matter with [illegible] Attorney and he has informed me that he has never [illegible] made any offer to Ronnie Moore regarding [illegible].

I can only suggest that this [illegible] description was issued for the purpose of [illegible] money as possible by an appeal to [illegible].

Sincerely,

Wingate [illegible]
Chief of Police

COKE -
Lonnie Moore
(sound truck)

RECEIVED
DEC - 4 1963
VLADECK & ELIAS

Carl -

12-3-63

I've done all I can today - and am sending it along. I can check all the citations to source from a spare copy of the index, and will call you when I've done that. I'm afraid I have not been able to check the following quotes:

p. 21 Edwards, Kovacs
22 Saia
28-9 Johnson
23 Brinegar
24 Niemotko

There are loads of small corrections - far too many to give by phone - I've tried to mark them with a check at the left, but I may have missed some, so you'd better check all the penciling. The footnotes need to be numbered. If you get galley or page proof, I'd appreciate a chance to read it + call you. Someplace you'll want to put in the explanation (from the Taylor brief) about T. and R. On anything else, use your own good judgment - or call me -

Norm

Lonnie Moore

RECEIVED

DEC 12 1963

VLADECK & ELIAS

Dear Carl -

Now this is all set - except as noted. (Johnson - Va.) You may want to insert the good quote I found in Edwards, copied on this sheet - it's newer and better than Feiner. The only things I haven't checked are:

1. [illegible] this index against the text

2. The direct quotes

I can't do these, since I don't have a copy; maybe you can do them.

Let me know any further ~~thoughts~~, developments, etc. This was fun -

Norman

Moore v Louisiana

RECEIVED
JAN 1
VLADECK & ELIAS

Carl Rachlin
280 Broadway
N.Y., N.Y.

Dear Carl

I just read the 2 petitions for cert. I am very much enthused about the chances that cert will be granted.

I hope you will excuse the paper and the writing. I just wanted to quickly let you know how appreciative we are for the tremendous job you have done.

I think Paul did a tremendous job but the Moore petition was much better.

Hope to see you soon. Bob and Lolis send their regards.

Respectfully
Nils

WESTERN
TELEGRA

~~1343~~ 143

The filing time shown in the date line on domestic telegrams is LOCAL TIME

EJA042 NBA338 SYF228 =

SY GTA063 (W SNA062) COLLECT (MVD 280 BROADWAY) SN
WASHINGTON DC 17 139P EST =

CARL RACHLIN = ✓ 143
165 WEST 46 ST ROOM 1514 NYK =

PETITION FOR CERTIORARI MOORE AGAINST LOUISIANA DENIED TODAY. ADVISE ASSOCIATES =

JOHN F DAVIS CLERK.

FEB 17 RECD

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

February [illegible], 1964

Honorable John Davis, Clerk
U. S. Supreme Court
Washington, D. C.

Re: Moore v. Louisiana

Att: Mr. Rodack

Dear Sir:

Please be advised that the transcript of testimony submitted to the Court in the above case is needed in an habeas corpus proceeding Friday, February 28th, 1964 at the Baton Rouge Division of U. S. District Court for the Eastern District of Louisiana.

We would appreciate your sending it there.

Thank you for your courtesy.

Very truly yours,

CR/bm

CARL RACHLIN

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

FEB 27 REC'D

February 25, 1964

A. Dallam O'Brien, Jr., Esq.,
Clerk,
U.S. District Court for the
Eastern District of Louisiana,
Baton Rouge, La.

RE: RONNIE M. MOORE VS. LA.,
No.734, Oct.Term 1963

Dear Mr. O'Brien:

At the request of Carl Rachlin, Esquire, one of the counsel for the petitioner in the above-captioned case, I am forwarding herewith by airmail a certified copy of the record of the Nineteenth Judicial District Court, Parish of East Baton Rouge, Louisiana, Criminal Section, No. 43,067.

Mr. Rachlin has advised this office that this record is to be used in conjunction with the habeas corpus proceedings now pending in your court, No. 745 Misc.

Very truly yours,

JOHN F. DAVIS, Clerk

By

Michael Rodak, Jr.,
Assistant.

MR:tw
Encl.

cc: Carl Rachlin, Esq.

U.S. COMMISSION ON CIVIL RIGHTS LIBRARY
1701 Pennsylvania A[illegible]ue, N.W.
Washington, D.C., 20425

The Commission Library would appreciate receiving complimentary copies (3 if possible) of the publication(s) listed below. If you are unable to fill this request without charge, please advise us of costs.

Copies of the brief in re CORE Field Secretary Ronnie Moore, arrest and conviction.

MAR 5 1964

March 3, 1964
Date

Eleanor M. Walden
ELEANOR M. WALDEN
Commission Librarian

GSA-WASH DC 64-9034 CCR-FORM 64-6